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Religious Argumentation in Demosthenes

Gunther Martin



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DIVINE TALK

RELIGIOUS ARGUMENTATION IN DEMOSTHENES

GUNTHER MARTIN

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GUNTHER MARTIN

Oxford, November 2008

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ABBREVIATIONS AND CONVENTIONS

ARV ² =	John D. Beazley, <i>Attic Red Figure Vase Painters</i> (Oxford, ² 1963).
AVI =	<i>Attische Versinschriften</i> , ed. Werner Peek (Berlin, 1980).
CEG =	<i>Carmina epigraphica Graeca saeculorum VIII V a.Chr.n.</i> , ed. P. A. Hansen (Berlin and New York, 1983).
CID =	<i>Corpus des inscriptions de Delphes</i> , ed. Georges Rougemont <i>et al.</i> (Paris, 1977–2002).
CLGP =	<i>Commentaria et lexica Graeca in papyris reperta</i> , ed. Guido Bastianini <i>et al.</i> (Munich, 2004).
CVA Ferrara =	<i>Corpus Vasorum Antiquorum. Italia. Museo Nazionale di Ferrara</i> , ed. Paolo E. Arias and Stella Uggeri Patitucci (Rome, 1963–71).
FGrH =	<i>Die Fragmente der griechischen Historiker</i> , ed. Felix Jacoby (Leiden, 1923).
FHG =	<i>Fragmenta historicorum Graecorum</i> , ed. C. W. Mueller (Paris, 1878–85).
GHI =	<i>Greek Historical Inscriptions 404–323 BC</i> , ed. P. J. Rhodes and Robin Osborne (Oxford, 2003).
IE ² =	<i>Iambi et elegi Graeci ante Alexandrum cantati</i> , ed. Martin L. West (Oxford, ² 1989–1992).
IG =	<i>Inscriptiones Graecae</i> , ed. Adolf Kirchhoff <i>et al.</i> (Berlin, 1873).
K-G =	Raphael Kuhner, <i>Ausführliche Grammatik der griechischen Sprache</i> , 2. Teil: <i>Satzlehre</i> , rev. Bernhard Gerth (Hannover and Leipzig, ³ 1898–1904).
LfgRE =	<i>Lexikon des frühgriechischen Epos</i> , ed. Bruno Snell <i>et al.</i> (Göttingen, 1955).
LIMC =	<i>Lexicon iconographicum mythologiae classicae</i> (Zurich, 1981–99).
LSAM =	<i>Lois sacrées de l'Asie Mineure</i> , ed. Franciszek Sokolowski (Paris, 1955).
LSCG =	<i>Lois sacrées des cités grecques</i> , ed. Franciszek Sokolowski (Paris, 1969).
LSS =	<i>Lois sacrées des cités grecques: Supplément</i> , ed. Franciszek Sokolowski (Paris, 1962).
LSJ =	Henry G. Liddell, Robert Scott, Sir Henry Stuart Jones, <i>et al.</i> , <i>A Greek English Lexicon: With a Supplement</i> (Oxford, ¹ 1968, Suppl. 1996).
OLD =	<i>Oxford Latin Dictionary</i> , ed. P. G. W. Glare (Oxford, 1982).
PAA =	John S. Traill, <i>Persons of Ancient Athens</i> (Toronto, 1994).
ParG =	<i>Paroemiographi Graeci</i> , ed. Ernst v. Leutsch and Friedrich W. Schneidewin (Göttingen, 1839–51).

PCG =	<i>Poetae Comici Graeci</i> , ed. Rudolf Kassel and Colin Austin (Berlin, 1983).
PEG =	<i>Poetarum epicorum Graecorum testimonia et fragmenta</i> , ed. Alberto Bernabé (Leipzig, 1996 2007).
PGM =	<i>Papyri Graecae Magicae</i> , ed. Karl Preisendanz (Leipzig, 1928 31).
PMG =	<i>Poetae Melici Graeci. Alcmanis, Stesichori, Ibyci, Anacreontis, Simonidis, Corinnae, poetarum minorum reliquias, carmina popularia et convivia lia quaeque adespota feruntur</i> , ed. Denys L. Page (Oxford, 1962).
PMGF =	<i>Poetarum Melicorum Graecorum Fragmenta</i> , ed. Malcolm Davies (Oxford, 1991).
P.Oxy. =	<i>The Oxyrhynchus Papyri</i> (London, 1898).
RE =	<i>Paulys Real Encyclopadie der classischen Alterthumswissenschaft: Neue Bearbeitung</i> , ed. Georg Wissowa <i>et al.</i> (Stuttgart, 1894 1978).
RVAp =	A. D. Trendall and Alexander Cambitoglou, <i>The Red Figured Vases of Apulia</i> (Oxford, 1978 82).
SEG =	<i>Supplementum Epigraphicum Graecum</i> (Amsterdam, 1923).
SVF =	<i>Stoicorum Veterum Fragmenta</i> , ed. Hans F. A. von Arnim (Leipzig, 1903 24).
TrGF =	<i>Tragicorum Graecorum Fragmenta</i> , ed. Bruno Snell <i>et al.</i> (Gottingen, 1971 2004, vol. i 21986).
VS =	<i>Die Fragmente der Vorsokratiker. Griechisch und deutsch</i> , ed. Hermann Diels and Walther Kranz (Berlin, 61952).

Greek names appear in their Latinized form. Exceptions are not due to any particular principle but my personal preference.

Spurious works are not marked as such in short references, even where authenticity is out of the question (e.g. ‘Plutarch’s’ *Vitae decem oratorum*, or ‘Xenophon’s’ *Respublica Atheniensium*).

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Introduction

ALTHOUGH we have an exceptional wealth of information about ancient, especially Athenian, religion, it remains a mystery in some ways. We know of dozens of temples, have a good idea about the festival calendar, the organization of the celebrations, the procedure at ceremonies, and even the distribution of meat after sacrifices, but how important religion really was to people is elusive. Even though the middle position is increasingly winning ground, two extreme views still exist: one group of scholars believes that, as for Thales everything was full of gods, so everything in ancient Athens was full of religion. In their view, religion permeates every sector of people's lives and influences, or even dominates, all actions and norms.¹ The other group believes that the Athenians were reasonable people (reasonable that is by the standards of that group) and able to make decisions based on rational arguments. A few eruptions of superstition apart, the Athenians took the world as the sum of what they saw and did not foist off the responsibility for their decisions on the gods.²

This book will not join either party. Instead, it will present instances that will both satisfy and dissatisfy each. It will become clear that the Athenians were perfectly able and willing to debate about how they could best please the gods and listen to warnings against the godless, but also to accept appeals not to give heed to another person's bigoted rantings. What is necessary, therefore, is to establish how this fluctuation works in detail; in consequence, I shall explore such questions as under what conditions the one or the other prevailed, when and how much the Athenians mentioned religion, and what they said when they did so.

The area of study will have to be limited. To get an impression of how the presence of religion in the discussions of the Athenians could vary, it will be most expedient to look at the genre of written texts that most clearly reflects what was said. The body of texts to be examined is therefore that in which the Athenians directly argued about and debated their views: public oratory.

Several factors contribute to the importance of the speeches in the Athenian assembly and law courts for our knowledge of the views of the people. To begin with, there are few topics the Athenians did not discuss in these settings. Not only

¹ The founding father of this view of ancient society is Fustel de Coulanges (1864). A more advanced, but a not dissimilar view has been presented e.g. by Bruit Zaidman and Schmitt Pantel (1992).

² e.g. Weber (1922); on Greece in particular cf. Murray (1990a) and most recently Herman (2006).

did they decide about policies and the punishment of crimes in them, but they also used the courts in particular to define what kinds of behaviour they regarded as righteous and acceptable. Athenian laws are not formulated in a way that gives a clear explanation of what constitutes a certain offence; instead, the offence was only stated as such together with the procedural consequences and the sentence. In this way, it was the task of the *dikasts* in each trial to establish whether they thought that what had been brought to court really fell into this category of offence, for example treason, illicit slander, or misconduct in office.³ In addition, the way in which litigants tried to convince juries was largely up to them. Few restrictions existed that forced the litigants to speak only about the legal aspects of the case at issue.⁴ The arguments thus vary, from those on people's private life and earlier conflicts between the litigating parties to their political record to general principles of human coexistence. In the end the *dikasts* had to decide whose arguments (or performance) they approved of more. Without further deliberation each *dikast* cast his vote. Finally, the fact that the verdict was passed (or the decision of the assembly made) by a large number of people contributes to the argumentation being a legitimate expression of the people's judgment. The decision-making bodies of Athens may by and large have been constituted similarly to the citizenry as a whole (that is, the free male full citizens).⁵ So the speakers must have thought that, even if they did not exactly express the people's thoughts, what they said was acceptable and believable at least to the majority of them.⁶ The assembly and the courts may therefore be regarded as places of debate and affirmation of common values and a reliable point of reference for attitudes and beliefs of the common people.

Scholarship on the orators in the last half-century⁷ has accordingly been dominated by the attempt to use the speeches of the Athenian orators as a quarry from which to win insights into what the Athenians really thought.⁸ Extracting

³ *Lycurg. Leocr.*, *Lys.* 10, *Dem.* 19; cf. Harris (2000*a*), Lanni (2006), 117–18. The extreme case is presented in *Dem.* 21, where the question is whether *Midias* has 'committed an offence concerning the festival'.

⁴ Lanni (2006), 41–74, cf. also Rhodes (2004).

⁵ Findings have been indecisive: Ober (1989), 142–4 believes in a slight overrepresentation of elder citizens, Todd (1990*a*) of farmers.

⁶ The people's views were certainly by no means consistent, and in some cases speakers may present their personal, somewhat exaggerated, views. Moreover, certain features of Athenian religion do not appear in oratory at all (cf. Parker 1985*a*, 91). However, the need to please the audience (without the licence of being at the same time controversial, as the contributions to dramatic contests may be) guarantees that we are close to common perception or to some kind of agreed set of views.

⁷ I must not pass over in silence that commentaries have been produced in increasing number since the 1990s. These are valuable tools and (one hopes) help to move the orators out of the state of neglect in which they have long remained. To the subject of the present study, however, they contribute only sporadically, though of course I owe very much to the material and the discussions provided most of all by Wankel (1976) and MacDowell (1990 and 2000).

⁸ Most prominently Dover (1974) and Mikalson (1983). In contrast to these intellectual histories Rudhardt (1992) concentrates on the linguistic side: the meaning of particular terms and on the extension of the respective concepts. Most recently, Herman (2006) has tried to bring together the various different analyses and the studies on the working of Athenian society. However, since he follows the rationalist view of Athens, he has little to say about religion.

'popular beliefs' was the focus of work on a genre that has rarely been deemed suitable for studies of its literary quality in the last 100 years or more.⁹ Instead the texts were expected to deliver a coherent and consistent picture of popular views on religion – as on women or moral questions. The first remarkable and in some aspects still not superseded study, Meuss (1889), emphasizes the difference between speeches and other literary sources in that the former reflect popular religion, the latter the religious views of individual thinkers (such as philosophers and dramatists).

Only in few instances do authors depart from this focus on people's beliefs. King (1954/5) is interested in the ways in which religion is used by the orators rather than in the content of their statements.¹⁰ He classifies the references to religion in speeches as direct evidence, appeals to precedents, and a more general but undefined category. Another point he thereby makes is to suggest that orators deliberately select from the uniform set of acceptable statements: their choice depends on what suits their tactic in the individual case. The studies in succession to Meuss had not considered the function of the passages for the speech. Religion (*qua* religion), however, is used on purpose and to a certain end. King still blurs many important points that influence the use of religion in the speeches. He looks neither at the context of references to religion nor at individual orators. Instead he generalizes and presupposes that there is no fundamental difference between speeches or speakers. The differentiation is carried one step further by Montgomery (1996), who suggests that religion can be applied consistently throughout a speech to the end of self-praise and vilification of the opponent: in his speech *On the False Embassy*, he says, Aeschines tries to convey the impression that for him religion is a serious matter, whereas Demosthenes' strategy consists in making Aeschines look 'prone to bigotry and superstition'.¹¹

What previous publications do not accomplish, the objective of this study is to contextualize and differentiate. The question is not what the popular beliefs are that we find, nor simply to what argumentative or other uses these beliefs can be applied. Instead, my aim is to ask when and why orators use these arguments. They do not use religion just because it is there, but because it serves their purpose and because it provides them with argumentative material of a kind or quality they do not find elsewhere. At the same time they cannot, as will turn out, use religion indiscriminately but have to conform to certain rules of what is acceptable. The latter concerns not only the contents of the 'beliefs' but also the

⁹ i.e. since Blass (1887–98); the most notable exception is Pearson (1976).

¹⁰ Cf. Furley (1997), who undertakes something similar, though restricted to speeches from a relatively short period of time (about 420 to 399) and a limited scope of issues (mainly punishment of pollution).

¹¹ Montgomery (1996), 129–30. In its approach his paper resembles that of Vielberg (1991), esp. 52, who analyses only Lycurgus' speech *Against Leocrates*, saying that Lycurgus employs religion to cover up weaknesses in his legal argumentation. However, Vielberg falls short of giving an overall impression of the opponents' use of religious arguments, otherwise simply listing a number of relevant passages.

form and manner of their presentation. Nobody will doubt that in a lawsuit speakers did not only have to adopt a different tone from that of a funeral oration, but also to use different arguments altogether. This book tries to fill the gap that exists in these two aspects: to establish to what end speakers employ religious references and ideas in specific situations and what restrictions are imposed on them in this respect by the setting of their delivery. For practical reasons I shall largely concentrate on the work of a single orator Demosthenes without losing sight of the rest of the corpus.

Part I of this book looks at his longest surviving speeches, those delivered in trials on public matters. These are the most complex products of Athenian oratory that we have, and at the same time the richest source of religious argumentation. For them it is both possible and necessary to investigate closely what purpose religion serves. Because of the frequency of religious references in these speeches it is possible to state how the individual references are connected, what patterns they form, and how they fit in with the rest of the speeches.

In the case of Demosthenes it is even possible to divide his forensic speeches into those he delivered himself and those he wrote for others. Hence one is able to draw a distinction between Demosthenes the writer and Demosthenes the speaker, between the statements he makes *in propria persona* as a public speaker and those he will not be identified with. Above all, we are in the unique position of having the opponent's speech in relation to two of his forensic orations, so that we can check to what extent and in what respects religious arguments are forced upon him by his adversary.

Moreover, the corpus of Demosthenes' orations is the only one that contains not only forensic, but also deliberative speeches.¹² It even constitutes the only source for authentic addresses to the Athenian assembly. Part II deals with these and with the other group of smaller speeches, those in private trials. Since religious references are much rarer in these two cases – and since we often know less about the background – it is more difficult to find out whether they are part of a grander scheme. Religion is not a big enough theme in these speeches to allow it to be treated as a motif that could be developed in itself. So it is more sensible to search for recurrent patterns in the whole body of speeches. Since the only surviving assembly speeches are those of Demosthenes, it will even be necessary to have recourse to comparable material from other literary genres, the reliability of which is not beyond doubt. Otherwise it would not be possible to distinguish between how Demosthenes handles religious arguments and what was general practice.

In all this I try to be as inclusive as possible as regards the material I consider and the ways in which I use it. That means that, on the one hand, more or less

¹² Of the two epideictic ones in the corpus the *Eroticos* is certainly spurious and about the *Epitaphios* it is hard to give a final verdict: for arguments on its spuriousness see Blass (1887–98), iii/1. 404–6 and Treves (1936); for its authenticity, though without decisive reasons, Sykutris (1928), Worthington (2003a). So these two speeches will remain out of consideration. On deliberative speeches cf. Ch. 6.

every reference to religion in the orators will be relevant to this book. Religion in Athens cannot be reduced to contents people believed in, but it is necessary to take religious action into account. In Athens it seems that what one believed was on the whole less incriminating than the way in which one acted with relation to the gods.¹³ For this reason, it would be a mistake to limit 'religious' argumentation to statements based on what people thought about the world and actions of the gods. The term 'argumentation', too, is used here in a wide sense. It denotes not only the sum of logical arguments – that is syllogisms and enthymemes – but should be understood in the sense of the whole range of 'means of persuasion'. One's piety is certainly an 'argument' why one should get the people's or jury's vote, even if a speaker never expresses this view but confines himself to the display of his piety. Accordingly, I should like to define 'religious argumentation' as the use of references to religious ideas, actions, and institutions for the purpose of influencing an audience to vote for the speaker's cause.

Further Assumptions and Definitions

Behind the seemingly simple definition given above lie several traps caused by assumptions I make. The greatest is certainly that 'religion' is notorious for being a concept the Greeks did not have a word for. However, we apply the anachronistic word to the Greeks only because for us several concepts of the divine and its worship do exist. Since the Athenians did not believe in the exclusiveness of their own gods or hold that other faiths were irreconcilable with theirs and thus wrong, it was enough for them to have an expression that denoted the realm of the gods: τὰ τῶν θεῶν, literally 'the things of the gods', or τὰ θεῖα, 'the divine things', that is everything that was itself divine or related to the divine. The meaning can stretch down to human actions in relation to the gods, which can also be called τὰ πρὸς τοὺς θεοὺς.¹⁴ In this way the Athenians were able to express something's connection with the field we would call religion.

Likewise it has been said that there is no word that could be translated as 'profane', an area in which the gods have no place whatever. Where the Athenians seem to distinguish the two spheres they often use the dichotomy of ἱερὸν and ὄσιον, both of which are terms more or less clearly related to religious ideas. This last fact is one of the main arguments of those who do not wish to confine religion to a certain area of Athenian life.¹⁵ However, the dichotomy clearly shows that the Athenians did see a difference between an area where the gods were absolute masters (τὸ ἱερὸν) and another where they themselves were able to act quite freely without the necessity constantly to render accounts to the gods

¹³ Cf. Rudhardt (1960), 103, Garland (1992), 138, though this relationship has often been grossly exaggerated.

¹⁴ Cf. Rudhardt (1992), 12.

¹⁵ e.g. Samons (2000), 325–9.

and ask their permission (τὸ ὅσιον). The combination *ἱερὰ καὶ ὅσια* can thus encompass the entire state.¹⁶ What the Athenians express by *ὅσιον* when they juxtapose it with *ἱερόν* is more or less a euphemism. The *ἱερόν* money is the gods' own money. Whoever takes that money out of the precinct to which it belongs has to return it – and makes himself vulnerable to allegations of temple robbery even so. Money that is *ὅσιον*, by contrast, is at the disposal of the state and may in principle be used to the liking of the people, as long as that use is not straightforwardly offensive to the gods. The term *ὅσιον* is a negative one. It only indicates that the money is not classified for the gods but free for use without their objecting.¹⁷ Thus it is money the gods do not care about. Similar distinctions will be found in the course of this study: areas in which the gods take no interest (that is everything that is not sanctified) are profane in the sense that man can do what he wants with them.

As a consequence, it is possible to speak of 'religious argumentation' as opposed to 'argumentation free from religion'. The distinction is not a perfectly neat one, but it should be acceptable to most readers that whereas some ideas clearly draw on religion (for example if the gods are mentioned), there are some (and indeed the vast majority) that do not evoke religious ideas. The grey area is big: a festival is a celebration in honour of a god, but it is likewise an occasion on which a large number of people congregate. So the question is whether we have to take every mention of a festival as a significant reference to religion, and thus as an instance of religious argumentation, that has an effect on the reception of the argument by the audience. There is no clear answer to such a question, and the variations and nuances are too subtle to make one possible. Moreover, I would suggest that we should not speak of 'the audience' as if they were a homogeneous group sensing and judging everything in the same way. Unobtrusive references to religious institutions (for example a festival) may have high persuasive power on account of the religious associations for some dikasts, while their neighbours would only think of the celebratory aspect of the occasion.

In places I shall say that a certain passage is unlikely to have evoked religious notions in the audience. This is not supposed to exclude absolutely that a few dikasts may have reacted in that way. The point is that such references would not

¹⁶ Cf. Schol. Aeschin. 1. 54 ὅσια δέ ἐστι τὰ μὴ ἱερά. ὥστε πρῶτον τὰ ἱερά, δεύτερον δημόσια, τρίτον ἰδιωτικά, Ptol. Gramm. 394. 26 ὅσια . . . λέγουσιν τὰ ἰδιωτικά ὧν ἐφίεται προσάψασθαι. ἱερά δὲ τὰ τῶν θεῶν ὧν οὐκέτι ἔξεστιν προσάψασθαι.

¹⁷ Parker (2007), 1071 calls the sense of the word a negative one, relating to things 'on which the gods have no claim' – but perhaps we should say rather 'on which they lay no claim'; Chadwick (1996), 221–6 fails to see that on his interpretation as '*observing the religious code*' (p. 223) it is the negative aspect of not transgressing the rights of the gods, rather than actively pleasing them, that is denoted by *ὅσιον*. Effectively like Parker, van der Valk (1942), 127 defines things that are *ὅσιον* as an intermediate category belonging into the human sphere but being pure, as opposed to *ἱερόν* on the one hand and *βέβηλον* (a term not found in the orators, meaning 'uninitiated', hence 'impure', almost 'offensive to the gods', cf. Eur. *TrGF* 648) on the other; Connor (1988) acknowledges the distinction but emphasizes the concern about religious correctness outside the boundaries of the *ἱερά*. On *ὅσιον* ('just' with regard to the gods) as opposed to *δίκαιον* ('just' on a human level) cf. Ch. 4 n. 26.

have had a great impact on the entire jury's view of religious rights or wrongs of the case. Where the religious ideas or realities are mentioned in isolation, without an explanation or special argumentative stress on the religious aspect of the phenomenon, I tend to regard their significance as low. However, if a festival or temple is mentioned in a cluster next to other religious references, it will be necessary to check whether this accumulation may be intended.

The same principles are applied regarding the use of language. Every language is flexible in the transfer of vocabulary from one field to another. On the one hand, religious language exploits other fields to express ideas for which no word exists that is exclusive to its own. Examples of metaphorical terms of this kind in Greek are *καθαρός* (which means clean, but then assumes the meaning of ritually pure or unpolluted) or *τέμενος* (a piece of land cut off, then more specifically a precinct).¹⁸ On the other hand, terms with a genuinely religious meaning can lose their immediate connection with that field and be applied to matters outside it. The phenomenon probably exists in all languages. In English, many words that originated from a society in which the clergy was a dominant force have assumed a meaning in the secular world.¹⁹ Often, at least for a period of time, the term is employed in both meanings. The word 'holiday' could be used in the meaning 'day of rest' in 1782: 'Though wedded we have been/These twice ten tedious years, yet we/No holiday have seen.'²⁰ The speaker is not referring to days such as Christmas in particular, but to the fact that he and his wife have not taken a single day off work. But even a hundred years later it was possible to use 'holiday' (with this spelling) of the religious days.²¹

A frequent use of religious terms can be detected in highly emotional and evaluative contexts. The religious undertones often create a particularly intense effect, whether positive or negative. But it is not always clear that the effect is specifically religious. Thus it becomes doubtful whether words such as *μαρόν* (a common term of abuse literally meaning 'dirty, polluted, in need of expiation') or even *ἀσεβές* (commonly rendered 'impious', originally more like 'lacking in reverence')²² and *ὄσιον* merely derive from religious language or whether they are still clear indicators of that register.²³ In linguists' parlance the difference is

¹⁸ In the same way the Greek *εὐχόμεαι* is used for a solemn announcement, be it a prayer or boast after the killing of an enemy. It seems to be one of the words that were not specifically religious, but the solemnity expressed by it made it suitable for application to this linguistic field, cf. Frisk (1960) s.v.

¹⁹ Hughes (1988), 51 lists examples of words assuming a secular meaning between 1100 (clerk) and 1850 (propaganda). On the history of the dichotomy of 'sacred' and 'profane' cf. Bremmer (1998), 25–31.

²⁰ Cowper (1782), ll. 6–8.

²¹ Phillimore (1873–6), i. 1037 'Fish carriages . . . shall be allowed to pass on Sundays or holidays.'

²² *εὐσεβές*, 'pious', is likewise often used in a broader sense, cf. Ch. 1 nn. 60, 62.

²³ Cf. Dirlmeier (1935–6), 185 on an expression as seemingly explicit as *θεοῖς ἐχθρός* ('enemy of the gods') in Euripides, comedy, and then oratory, 'wo kein Mensch mehr an die strafende Feindschaft der Götter im Ernste denkt und es keinen Sinn hat zu übersetzen: gottverhaßt.' As I have pointed out in connection with festivals, the sensitivity of audience members may vary, but Dirlmeier is certainly right as regards the likelihood that the religious notion was not normally perceived very clearly.

one between terms that do not belong to one single register and categorical code-markers.²⁴ It may be significant that the use of religious terms, especially in denigratory contexts,²⁵ as insults without a precise descriptive component relating to religion is not an isolated phenomenon. For example, in our best source of evidence for colloquial Attic, comedy, religious language is one of the commonest forms of abuse.²⁶ A clear connection to religion is often not to be assumed. *μιαρόν* appears in contexts in which the person thus addressed is in no way accused of a breach of religious norms, such as in the following example from Menander (*Scu.* 308 15):

{Xa}	ὁ καλὸς ἀδελφὸς εἰς τοσαύτην ἔκστασιν ἤδη καθίστησιν με τῇ πονηρίᾳ. μέλλει γαμεῖν γὰρ αὐτός.
{Δa}	εἰπέ μοι, γαμεῖν; δυνήσεται δέ;
{Xa}	φησὶν ὁ καλὸς κάγαθός, καὶ ταῦτ' ἐμοῦ διδόντος αὐτῷ πάνθ' ὅσα ἐκείνος ἀποπέπομφεν.
{Δa}	ὦ μιαρώτατος.
{Xa}	μιαρόν τὸ χρῆμ' οὐ μὴ βιώ, μὰ τοὺς θεοὺς, εἰ τοῦτ' ἐπόψομαι γενόμενον.
CHAERESTRATUS:	For now my noble brother's driving me Distracted by his wickedness. He means To marry her himself!
DAOS:	To marry her? Will he be able to?
CHAERESTRATUS:	That's what he says, The noble gentleman, and that despite My giving him all that my nephew sent.
DAOS:	The filthy swine!
CHAERESTRATUS:	Yes, filth indeed. By God, I'll put an end to life, rather than see This happening.

Chaerestratus' brother Smicrines, being of advanced age, is intending to marry his orphaned niece. In doing this he would comply with Athenian law. Chaerestratus and the slave Daos abhor the marriage because of the difference in age between groom and bride, but Smicrines can point out that he is following

²⁴ Saville-Troike (2003), 61.

²⁵ Cf. Parker (1983), 4, Dover (2002), 95–6. Dover (1974), 252 draws attention to 'the readiness with which a character in comedy can use "impious", "unholy", etc., as terms of abuse . . . , as if he himself had the right to decide what and whom the gods should condemn.'

²⁶ In fact it is the commonest together with accusations of homosexuality. Examples from the 5th and 4th cc. include *Ar. Ach.* 182, 557, *Eq.* 239, *Vesp.* 899, Antiphanes *PCG* 157; in the last case we may possibly see how the term comes to be more widely used: first begging priests are called by it, then it is transferred to despised occupations, especially fishmongers.

common practice (260). *μιαρόν* (here translated as ‘filthy’) in this example expresses a feeling of inappropriateness and criticism of Smicrines’ egotism (the girl is engaged to another man). Religious impropriety is nowhere suggested. So it seems more appropriate that these words be subsumed among the ‘gradient phenomena’²⁷ at the boundaries of the religious register. It is, therefore, doubtful whether such abuse if hurled against an opponent in court would have evoked religious associations in a large part of the audience. The development in use may appear clear in the case of this particular word. Originally denoting physical and ritual impurity, *μιαρόν* was used to mark someone who in ritual and social terms had to be avoided and excluded. However, in the end the expression of disgust became independent of its particular source and could be used as a dead metaphor regardless of what caused the feeling. Even clearer cases, expressions that live on as colourless phrases, will occur in the course of this study.²⁸

We must not assume, however, that religious terms were used indiscriminately for general abuse – at least not by all speakers or comic writers. When we look at the seemingly similar *ἀνόσιον*, we find it four times in Menander’s *Dyscolus*, but nowhere else (as abuse without clear religious connotation) in comedy. In the speeches, too, we shall find that this is a rare word, often, but not exclusively, used where religious ideas are touched upon. It is thus necessary to consider in each case, and for each word, whether the religious connotation was intended to be felt or would be felt by a substantial part of the audience.

As a rule of thumb, I shall deal with all these words in a way that I hope will be accepted as common sense. If a word is regularly used in connection with religious ideas, I regard its ‘evocative value’ as high, assuming that the religious connotations will be perceptible even if in the specific context nothing else hints at a religious meaning. With words that seem to have lost their strong bonds with the religious register, I treat them as neutral: if the surrounding text contains more vocabulary that points towards the gods and related issues, I am inclined to attribute to them a higher potential for the evocation of religious associations and a higher likelihood of deliberate intention on the part of the author.

So a passage with consistent use of religious vocabulary is regarded here as more significant than one in which the relevant notions were probably so weak that only those who were predisposed to hear them could actually do so. I shall also interpret it as an increase of the markedness and significance of religious argumentation if the religious topic as such is directly addressed. If a speaker mentions religious institutions or presents (potentially) religious offences without marking them as such, the religious aspect may be incidental. If, however, the speaker calls attention to the religious nature of an offence by mentioning its specifically religious elements (I shall sometimes call it the ‘religious content’ or say that the religious elements are treated ‘as such’), this aspect becomes more

²⁷ Saville-Troike, loc. cit.

²⁸ On invocations cf. Ch. 9 n. 1, on *ἀν θεός θελῶ* Ch. 6.

prominent and notice of it hardly avoidable if the reference is to be interpreted. A simple example is the difference between lying (*ψεύδεται*) and perjuring oneself (*ἐπιορκεῖν*). Demosthenes uses both terms when he speaks about the Macedonian king's breaches of treaties. The meaning of both terms overlaps considerably, but while the former denotes any untrue utterance, the latter signifies that an oath has been broken. So when Demosthenes juxtaposes the two terms (e.g. Dem. 2. 10), the specific qualities of each, and thus the notion of the violated oath in the latter, are given particular prominence. On a larger scale, we can see the same in one of the examples given above: a festival may be a reference point in the Athenian calendar or a joyous occasion in the life of the Athenians. If the focus of attention in an utterance is on one of these facets, then it is far from certain that the religious character of these days is in the speaker's mind. However, the perception of the festival is likely to change if the element of worship and the worshipped deity are mentioned.

Texts, Speeches, and Speechwriters

A very different problem is the nature of our texts themselves. The state of the manuscript transmission is generally not problematic.²⁹ The question of what happened before the speeches were entrusted to the manuscripts is far more urgent. In many cases, mainly related to the private speeches, we do not know for certain who composed them. Given that speeches were often written for delivery by others, the content does not necessarily help to decide whether a speech was composed by the orator under whose name it is preserved. Dover suggests that logographic speeches, meaning speeches composed by professionals on behalf of the actual litigants, were produced in cooperation between advisers/speechwriters and those who commissioned them. So even where a famous speechwriter was involved, the attribution to him could be only part of the truth – and the exact share of each partner would be impossible to establish.³⁰ However, as we shall see, authorship may not be all-decisive, and the problem occurs in only one of the public speeches (Demosthenes' *Against Timocrates*), in which there is reason to believe that someone interfered in a substantial section in the middle (or that Demosthenes interfered only in the framing sections).³¹

In one other case (*Against Aristogiton I*) the instruments of analysis fail. The debate is ongoing on all levels: whether the speech was written by Demosthenes, whether it was meant for delivery at all, or whether Demosthenes may have written it for another person. The answer that seems most likely is that Demosthenes composed it, but it is much more doubtful if he could have delivered the

²⁹ On the *Third Philippic* cf. Bühler (1978) and below, Ch. 6.

³⁰ Dover (1968a), 148–72.

³¹ Ibid. 161–3. Dover suggests that a section of forty-six paragraphs of *Against Timocrates* was written by a different person, perhaps the one who eventually delivered the speech, cf. Ch. 4 n. 53.

speech himself to say nothing about the possibility of its never being intended for delivery.

An even bigger problem is the relation between the speeches we have and the speeches given in the assembly or the courts. Few texts have passed the scrutiny of the nineteenth century without being declared impossible as an actual speech. In the case of the deliberative speeches, it has been suggested they may be mere pamphlets, since Athenian orators may not have published their addresses to the assembly. This view, however, has been convincingly refuted.³² The forensic speeches are partly assumed to be drafts in an imperfect condition, partly said to contain details that would have been obsolete by the time of delivery, and at least one can be shown to have undergone revision, which also suggests (plans for) publication.³³ It is fairly obvious that only a shorthand record of the speech taken at the trial could be an accurate copy of the actual words. Even Demosthenes, notorious for his tendency to prepare much of his speeches, will have been forced to improvise. However, the existence of obvious drafts shows what the speeches looked like in principle. More than that, they give us an idea of what a speaker planned to say under ideal conditions (with no need for *ad hoc* replies to the opponent or the audience). They may thus reflect the intentions of the speaker even better because he must have sketched his general strategy earlier. What we have is therefore the essence of what the speaker thought he could and should say. So I work with the assumption that our texts can be seen as realistic speeches. Where we have the draft we also have Demosthenes' starting-point when he was addressing the assembly or the jury. Even where it is not, the form of a speech is retained; the texts are not transformed into pamphlets. They are thus the equivalent to the real speeches and a reliable guide to what the speaker actually said. There is no reason to believe that the argumentation was fundamentally different in the speeches Demosthenes gave.

³² Against the pamphlet theory Adams (1912); on the questions of delivery and publication by the orator Hansen (1984), Harris (2000*b*), Trevett (1996*a*), 437–41; Tuplin's arguments for assembly speeches not having been drafted in writing (1998, 292–5) may be right for most politicians, but this cannot mean that all politicians must have stuck to this norm. On other extant deliberative speeches cf. Ch. 6 n. 4. Since the orations have been transmitted in the form of complete speeches, they will be treated as such for the present purpose: there is no reason to believe that Demosthenes would have changed whole arguments *ex tempore* while writing out the rest in full.

³³ Imperfect state: *Against Midias*, cf. already Photius cod. 265, 491^a40^b6, against this view Erbse (1956) the speech was certainly not revised, cf. MacDowell (1990), 26–8; outdated contents: *Against Aristocrates*, cf. Lane Fox (1997), 183–7, *On the False Embassy*, cf. MacDowell (2000), 24–6, *Against Timocrates*, cf. Blass (1887–98), iii/1. 284, Kreuser (1888) the middle section argues on the basis of conditions described as obsolete in the rest of the speech (cf. n. 31); revision after delivery likely: *On the Crown*, cf. Wankel (1976), 51 (against Fox 1880, 217). In general, some elements that are unflattering to the speaker may have been left out by all speechwriters, e.g. the defendant's lamentation with his children at the end of his speech, which is often anticipated by the opponent (Andoc. 1. 148, Lys. 20. 34–5, Dem. 21. 99, cf. Pl. *Ap.* 34 c, Ar. *Vesp.* 568–74) but never occurs in a speech. Todd (2002), 164–5 argues also for misrepresentation of cross-examining of the opponents. Worthington's arguments (1991*b*) about fundamental change of the structure of speeches do not seem very convincing.

These few remarks already show that this book continually tries to find a balance between various opposite dangers: between disregarding the problems that work on the speeches entails and getting entangled in them; between mere listing of religious references and over-interpretation; between analysis of minute details and an all too broad picture; between getting lost in the complications of the use of language and oversimplification about what expressions mean and what they evoke in the audience – the list could be continued. It will not be possible to satisfy every reader. But if enough survives between these pitfalls to further our understanding of oratory and of how Athenians perceived and reacted to religion in public debate, this book will have achieved what it was meant to. Others may follow and take the analysis further; if this book is a useful basis for future discussion, it has served its purpose.

PART I

SPEECHES IN PUBLIC TRIALS

PLUTARCH preserves the anecdote that Demosthenes was impelled to begin his education in oratory when from a hidden place he listened to the politician Callistratus speaking in an Athenian court. There is no reason why we should regard this as more than an anecdote invented in hindsight to explain how someone came to embark on an occupation in which he later excelled.¹ Demosthenes had incentives enough to attain the necessary skills for public speaking. First, it was one of only two ways (along with military leadership) in which one could assume some power in Athens; second, Demosthenes, who had been deprived of a considerable fortune by his guardians after his father's death, could not hope to regain his inheritance except in the courts of law. In his earliest speeches, written shortly after his coming of age around 365, he sued his former guardians and those who had supported them. Subsequently, it seems, he made the composition of speeches for others his profession. While we have only speeches from private cases at the early stage of this activity, the subject-matters become more significant as his career continues. It is around the year 355, when Athenian ambitions to remain a pan-Hellenic player had suffered a setback in the Social War, that we see him transcending the limited field of inheritance, mercantile, and other small-scale trials. He started writing speeches for public trials (*γραφαί*) involving political issues and personnel: he developed arguments on laws and other political issues and wrote invectives against prominent Athenians. The extant speeches of this group are *Against Androton*, *Against Timocrates*, *Against Aristocrates*, and, with some reservations, *Against Leptines*. Moreover, he began to address the people himself in the assembly. The fact that political subject-matters in the commissioned works appear at around the same time when Demosthenes himself entered politics suggests that the forensic speeches too may have served a political purpose. Demosthenes may have tried to support a political cause or to make himself known to important people as an able writer.²

Nevertheless, Demosthenes had to wait until the 340s to establish himself as a *ρήτωρ*, that is one of the speakers who regularly addressed the people in other

¹ Plut. *Dem.* 5. 1–5; that this is a stock anecdote is suggested by the parallel of Hermippus fr. 72 Wehrli.

² The former position is traditional, e.g. Schaefer (1885–7), i. 363, modified in Burke (2002); for the latter cf. Badian (2000), 24.

words: to become a politician. It seems that he became prominent only after (or with) his first *Philippic Speeches*, the series he started probably in 350.³ From the time of his fame as an acclaimed speaker, we have three speeches from public trials, *Against Midias*, *On the False Embassy* (*Parapresbeia*), and *On the Crown*, all delivered by Demosthenes himself. They form the main part of this section. In all of them Demosthenes acts as a man the audience knows because of his public offices and appearances.

Owing to their length and the large amount of religious references in them they will be analysed one by one. Each of the speeches has its own way of tackling religious ideas and institutions. These will be presented in an analysis of their place in the overall strategy of the speech along with some recurrent standard types of argument. Despite the differences in their nature and function the religious references in these speeches have in common that they show little argumentation that is specific to religion such arguments appear to be used mainly when it is forced upon Demosthenes by his opponent or public opinion.

The discussion of the specifically Demosthenic use of religion is supplemented by a survey of comparable argumentation in the logographic products of the 350s and the works of contemporary orators. We shall be able to see both the differences from other writers and the distinctions Demosthenes makes between arguments he chooses when he addresses the audience himself and those he has others put forward.

One extant speech is left out in this part which Demosthenes delivered on a political matter before a jury, *Against Leptines* from 355/4. This speech will be treated with the deliberative speeches. The kind of procedure seems to have been an instant creation of the Athenians, a mixture of a legislative session and a trial. The style is closer to the former, and thus to a deliberative setting, than to the confrontational tone prevalent in forensic argumentation.

³ It is generally assumed that Demosthenes tried to launch his career in the late 350s (Badian 2000, 36–7), but did not succeed before the *First Philippic*, cf. Dem. 4. 1. Will (1983b), 58 places the start of his rise in 348. In the first embassy to Philip in 347/6 he is already established as a leading politician, as might also be shown by his role in the *ἐκκλησίαι* on making the peace. Thus he may have tried to arouse attention not only for his political request, but also for himself. For the dates of these speeches cf. Lane Fox (1997).

1

Against Midias (Or. 21)

DEMOSTHENES' feud with Midias stretches back to the time before he became a public figure.¹ Shortly after his attaining maturity, at the time of his inheritance trials, it had started with a challenge for an exchange of property by Midias' brother Thrasylochus. In the course of these proceedings the siblings forced their way into Demosthenes' house. About fifteen years and a series of lawsuits later, Demosthenes voluntarily took on a choregia at the Great Dionysia of 348: he paid for the equipment, rehearsals, and maintenance of the men's chorus of the Pandionis tribe. During the time of this liturgy, Midias attempted in many different ways to prevent the chorus from efficient preparation and a successful performance: he tried to be elected superintendent of the festival, to obstruct the choristers' exemption from military service, to destroy the equipment of the chorus, to corrupt the trainer and the judges who had to elect the winner of the competition, and blocked and nailed up the side-scenes of the stage. The feud reached its climax in the theatre, when he punched Demosthenes in the face in view of Athenians and foreigners. So far, these are the events leading to the lawsuit that underlies the speech *Against Midias* as presented by Demosthenes.

In the aftermath of this scandal Demosthenes indicted his enemy: shortly after the end of the Dionysia, in an extraordinary assembly in the precinct of Dionysus, he accused him of 'wrongdoing concerning the festival'. This was the formula for the procedure of *προβολή*, which had been established especially for the prosecution of people preventing the proper conduct of the major Athenian festivals. The crowd confirmed that in their view, too, Midias had done wrong. That was all they could do, but they expressed their view not only by an official vote but also by booing and shouting (§§215–16). As Demosthenes had got the preliminary judgment he had sought from the people, the next step was a formal accusation in the courts of law. It is unclear whether Demosthenes really went so far or Midias was able to buy himself out (as Aeschines insinuates: 3. 52). Whether or not it came to trial, the extant speech would fit all the requirements of a well-presented case.²

¹ On the background of the trial cf. MacDowell (1990), 1–13. A mainly political interpretation of the events of 348 to 346 has been attempted by Giugnoli (1975).

² The arguments of those who doubt from internal evidence whether the speech was delivered have been (mostly) refuted by Erbse (1956) and Harris (1989). The only point I still regard as a problem is the doublet of the 'life-lease' image (§§101, 184–5).

In recent contributions to scholarship it has been clarified that the procedure was not (or would not have been) a *γραφὴ ὕβρεως* or *ἀσεβείας* (a public trial for insult or impiety) but still called *προβολή*.³ It was thus directly related to the assembly in the precinct of Dionysus. Therefore, we should assume that the charge was the same, namely wrongdoing concerning the festival. Because of the religious nature of the festival and a number of references to the god, the charge has often been supposed to be a religious one: the assumption is that impiety (*ἀσέβεια*) was the charge on which a *προβολή* was based.⁴ In the speech, however, political arguments predominate and Demosthenes' strategy has more recently been described in purely political terms.⁵ In this chapter, I shall try to explore how the large number of references to religion fits into the general strategy of the speech. First, I aim to show that Demosthenes introduces religious aspects only gradually, giving them a role in the trial that they did not have from the outset. The arguments regarding the festival will be treated in their relation to other evidence for the same issues. My aim thereby is to find out to what extent Demosthenes' presentation agrees with what appears to be the common perception of crowns and choregiai in Athens. Then I shall analyse the function of references to Dionysus and sacredness in the overall argumentation. Finally, I shall look at the section about Aristarchus (§§104–22), in which Demosthenes defends himself against the allegation that he was involved in homicide. It will turn out that Demosthenes attributes a bigger role to religion than was required by the charge: the audience apparently did not expect to hear that the offence implied charges of impiety. Despite the frequent allusions, however, the motif of impiety is not unrelated to, or independent from, the rest of the accusations. Instead it is subordinate to the allegation of *ὑβρις* and conforms with Demosthenes' general strategy. The religious element in it is not decisive, but the values that are emphasized are the same that can be found in the socio-political part of the accusation. Demosthenes' first task is to convince his audience that Midias has indeed deserved punishment in a public trial. So he portrays his opponent as an insolent violator of all civic norms: Midias acts without consideration for his fellow citizens or any norms of orderly co-existence. In this context, the offence against Demosthenes, which is described as meeting the criteria of impiety, is an indicator of Midias' outrageousness. The exploitation of this motif thus reinforces the points Demosthenes makes without reference to religion. The importance of a god's being among those treated hubristically is small. A certain predisposition of the audience is necessary for this aspect of the offence to

³ MacDowell (1990), 16, Rowe (1994), 57.

⁴ This interpretation is old; its earliest attestations are from the 3rd c. AD (Hermog. *Inu.* 129. 16–130. 2 and Apsines 1. 22, Schol. Dem. 21. 159). Libanius (*Arg.* 20. 2) has *ἀσεβεῖν περὶ τὴν ἑορτήν*, following Dem. 21. 199 and 227. The long list of modern scholars attributing to the procedure an eminently religious significance includes Berneker (1957), 45, who thinks the charge is 'Verletzung der Heiligkeit gewisser Feste'.

⁵ Wilson (1991), Ober (1994).

influence the verdict on Midias, and Demosthenes does not argue in such a way that the religious aspects of the charge are presented as a case in themselves. Instead, it is in the defensive section on Aristarchus that Demosthenes draws on religious concepts most heavily, picking up and reversing allegations he expects to be made by his opponent.

Building up Midias' Offences

The analysis of the speech in the scholia⁶ demonstrates that Demosthenes' main task was to present the offence as a public one, that is one against the public interest. Midias' line of defence was to admit that he had punched Demosthenes but dispute that his act had any significance beyond merely personal rivalry.⁷ Consequently, the first two objections Demosthenes takes up in the *praemunitio* deal with the procedure chosen (the *προβολή* instead of a private *δίκη*, §§25–8) and the allegedly private nature of the offence (§§29–35). The proof that it was a public offence proceeds in four steps, according to the scholia (21. 32): every act of *ὑβρις* is a public offence; what happens during a festival is public, even if it happens to a private individual; much more so, if it happens to a choregos; Midias deserves to be punished as a tyrant and bully not for Demosthenes' sake, but for that of the other victims. This main objection against the case of the prosecution is the reason why Demosthenes right from the start speaks about Midias' insolent, hubristic behaviour and repeats this accusation so often.⁸ The scholia point out the great number of instances in which Demosthenes hammers home his point that what Midias did was directed against the public. About the reading out of the law on *ὑβρις* the scholiast notes (21. 138 on §45):

ὅπερ ἄνω δι' αἰνιγμάτων ἀπεδείκνυε, τοῦτο νῦν σαφῶς ἔθηκεν, ὅτι “πάσα ὑβρις δημόσιον ἐστὶν <ἀδίκημα>”. εἰ γὰρ πᾶσιν ἐξεστὶ κατηγορεῖν τοῦ ὑβριστοῦ, πρόδηλον ὅτι κοινὸν πάντων τὸ ἔγκλημα. καὶ πεποίηκε τὴν ὑβριν ἴσον τοῖς φόνοις καὶ πάσαις ἱεροσυλίαις καὶ ταῖς προδοσίαις καὶ τοῖς τοιούτοις, ἐφ' ὧν ἐξεστὶ παντὶ τῷ βουλομένῳ κατηγορεῖν.

He now states clearly what he showed above in allusions: that ‘every act of *ὑβρις* is a public <offence>’. For if anybody may prosecute a hubristic person, it is clear that the charge concerns everyone. And he has equated *ὑβρις* to homicide, all kinds of temple robbery, treason, and so on, for which anyone willing is allowed to launch prosecution.

This scholion indicates yet another tactic: Demosthenes only successively reveals his argumentation. He mentions *ὑβρις* from the start but does not state his arguments in full and explicitly until he has prepared his audience for them. Only when they have heard implicit statements about all the four points mentioned does Demosthenes start expressing that every case of *ὑβρις* is a public

⁶ The scholia I shall refer to go back to Menander Rhetor's commentary on the speech according to Heath (2004), 182–3; for the following outline cf. *ibid.* 203–6.

⁷ Menander rejects the view that the charge was one of *ἀσέβεια*, cf. e.g. Schol. Dem. 21. 5, 159. On the issue being the public character and significance of the deed cf. e.g. Schol. Dem. 21. 2b, 95, 446.

⁸ Cf. Rowe (1993).

offence. Without the preparation, we can add, this blunt statement would have been too strong and evoked scepticism on the dikasts' part.⁹

It is possible to detect these techniques (gradual suggestion and playing up the significance of certain points) in the religious aspects of the case too. So the strategy behind the religious argumentation and its purpose can already be said to be related to that of the entire speech: looking at the distribution of references to impiety, the offended god, etc. it appears that the case did not rest on religious issues from the outset. The importance of the specifically religious aspects of the case does not seem to have loomed very large in the minds of the audience. Instead, Demosthenes has to build up the image of a Midias who attacks not just a private person but in the course of his hubristic behaviour someone in the service of Dionysus. Only then can he depict him as a scoundrel whose actions one might describe as impious.

At the start he does not mention any religious implications of the offence in the procedure. The festival is referred to, but in a factual sense using the *vox propria* (τὰ Διονύσια) without any particular emphasis on its religious nature that would carry a suggestion of a sacrilege.¹⁰ Instead, the proem consists of a reminder of Midias' insolence against a great number of citizens. In the first enumeration of Midias' victims (a recurrent feature of this speech) the god and the festival are not yet included (§7):

δέομαι οὖν ὑμῶν ἀπάντων, ὦ ἄνδρες δικασταί, καὶ ἰκετεύω, ... ἐὰν ἐπιδείξω Μειδίαν τουτονὶ μὴ μόνον εἰς ἐμὲ ἀλλὰ καὶ εἰς ὑμᾶς καὶ εἰς τοὺς νόμους καὶ εἰς τοὺς ἄλλους ἅπαντας ὑβρικότα, βοηθῆσαι καὶ ἐμοὶ καὶ ὑμῖν αὐτοῖς.

I appeal to you all, men of the jury, and I entreat you, ... if I prove that this man Midias has treated insolently not only me but also you and the laws and everyone else, to support both me and yourselves.

The absence of the god is in itself not remarkable. The fact, however, that from a certain point of the speech the god or his festival are mentioned in all lists of this kind¹¹ shows a shift from the god's 'absence' in the speech to his 'presence'.¹² The silence about the god or the religious dimension of the case in the whole proem suggests that the audience does not necessarily expect the argumentation to rely on religious issues; if the religious aspect had been essential to the offence,

⁹ This last idea is expressed clearly in a passage we shall come back to later (§16).

¹⁰ The centrality of the religious element in the character of the Dionysia has been denied and other traits have been highlighted in recent times, e.g. by Taplin (1978), 162 and Goldhill (1990), 114, amended by Rhodes (2003a), on the Dionysia as an occasion for leisure and amusement and as a place for politically significant acts respectively.

¹¹ In §26 Demosthenes leaves out the god, again, but from the point of the first mention he includes the divine realm each time (§40, 61, 97, 126).

¹² It would have been possible for the litigant to claim that the god had been a victim of ὕβρις. The direct allegation that someone did ὑβρίζειν τὸν θεόν/τοὺς θεούς is rare, but it exists (Eur. *Bacch.* 1297, Ar. *Nub.* 1506). For ὕβρις against the divine sphere as a common idea cf. Fisher (1992), 42, 142–8.

it is not easy to understand why Demosthenes ignores this aspect at the beginning of his speech.

That the gods are not prominent at this stage of the speech is certainly not due to a lack of interest on Demosthenes' part; rather, he lays the ground before he associates Midias' acts with impiety (§§51–61). He does not surprise his audience by introducing a completely new idea at once, but prepares his argument carefully. Thus for a start the regulations that prohibit the exaction of penalties during the festival are described as philanthropic and pious (εὐσέβεια, §12). So Midias, who disrupts the Dionysia, is insinuated no more to lack these virtues.

In the enumeration of Midias' misdeeds (§§16–17), Demosthenes gives the first example of his opponent's interference with the sacred sphere. Among other manoeuvres Midias broke into the workshop of the goldsmith who was to prepare the crowns and the garment for the chorus and partly destroyed it. The garment is called sacred (ἱερά) by Demosthenes, and he adds an explanation of why he thinks he can do so:

τὴν γὰρ ἐσθῆτα τὴν ἱεράν (ἱεράν γὰρ ἔγωγε νομίζω πάσαν ὅσῃν ἂν τις ἔνεκα τῆς ἑορτῆς παρασκευάζεται, τέως ἂν χρησθῇ) καὶ τοὺς στεφάνους τοὺς χρυσοῦς, οὓς ἐποίησάμην ἐγὼ κόσμον τῷ χορῷ, ἐπεβούλευσεν...

He plotted to destroy my sacred clothing (I regard as sacred all clothing that one makes for the purpose of the festival, until it is used) and the gold crowns which I ordered as an adornment for the chorus...

Still he does not qualify this act as one of impiety or draw a consequence from its sacredness. The definition of what is sacred looks like just an isolated, casual remark, an explanation of a peculiar use of a specific word. Otherwise, Demosthenes is silent about the religious components in Midias' actions, stressing only the damage done.¹³

Later Demosthenes compares himself to the archons, who also wear crowns as the emblem of their official function and their sacrosanctity. Demosthenes generalizes and claims sacrosanctity for everyone 'to whom the city gives the privilege of wearing a crown (στεφανηφορία) or any honour' (§33). He thus includes himself and explains that the attack against him, as a choregos during the sacred season, was a public offence.

Finally, Demosthenes explains that the pre-existing laws had obviously not sufficed, so that the law on the Dionysia (that is, on the προβολή) was introduced. Here it is called a sacred law for the god himself concerning the sacred season.¹⁴ In this way the god is introduced into the speech, the festival is

¹³ Demosthenes mentions the garment again in the discussion about the procedure he has chosen to pursue (§25–8). He does not even mention the possibility that he could have launched a γραφή ἀσεβείας. Instead, the argument is only concerned with the issue of whether a public or a private case would be appropriate and whether the requirement of the προβολή (the occasion of the offence) has been met.

¹⁴ ἱερὸς νόμος αὐτῷ τῷ θεῷ περὶ τῆς ἱερομηνίας, §35.

described as a sacred time and even the law is called sacred.¹⁵ From now on (§40), the god who has been established as a victim of Midias is also included in the lists of those who will get recompense in case of conviction.

The references to the religious aspects of Midias' offence become more and more serious. In this way the audience has been prepared for the last step: the explicit introduction of the concept of impiety (*ἀσέβεια*). This is done in §§51–61, where starting from ideas touched on earlier in the speech Demosthenes insinuates that maltreatment of a choregos during the competition in the precinct constitutes an act of impiety. In this way, the speech has reached its first climax, and Demosthenes has (after about one-quarter of the text) actually declared that there may be a religious aspect to his accusation. Compared with the allegations of civic misbehaviour put forward in the first clause of the speech this comes conspicuously late.

After the exposition of the charge is brought to an end, Demosthenes passes on to the previous history of the feud, which is followed by the narrative of the events after the Dionysia. The main part of this section is made up by the story of Aristarchus, a man accused of murder, and how Midias betrayed him, disregarding all the laws of friendship and hospitality. Midias had accused Demosthenes of complicity in the murder, either because of the feud or in order to avoid the trial resulting from the *προβολή*. In this context Midias is straightaway called impious and polluted (*ἀσεβῆς καὶ μιαρὸς*), a 'shameless polluted head' (*ἡ μιὰρὰ καὶ ἀναιδὴς αὐτῇ κεφαλῇ*),¹⁶ and accused of impurity and perjury. This passage in the middle of the speech (§§104–22) is certainly the strongest piece of invective directed against Midias, if not in the whole corpus, including the strongest language and probably the harshest allegations.

In the rest of the text Demosthenes accuses Midias of more offences and shows new aspects of the ones already mentioned.¹⁷ The result of the speech being riddled with religious references is that Demosthenes can reformulate the charge at stake: instead of wrongdoing he now speaks of acting impiously (*ἀσεβεῖν*, §199) concerning the festival. This is a fundamental reinterpretation and narrowing of the meaning of the law, restricting it to the religious aspects and intensifying them. It is very different from the remarks on the law at the beginning of the speech, where nothing reminds the listener or reader of the specifically religious background of the trial (or of an essentially religious character of the offence). When the charge is formulated as an act of impiety it seems like a purely religious

¹⁵ This probably does not have any meaning apart from stating its concern with the festival as a sacred time, cf. Schol. Dem. 21. 115, MacDowell (1990), 254, Parker (2004), 66–7.

¹⁶ §117; the combination seems to be unique, whereas *μιὰρὰ κεφαλῇ* is a very strong abusive rhetorical term, found first in Aristophanes (*Ach.* 285), then in the present speech three times, and later in the speeches against and for Ctesiphon (Aeschin. 3. 212, Dem. 18. 153).

¹⁷ In §126 he expands the list of victims, including the majesty (*σεμνόν*) and the supernatural element (*δαιμόνιον*) of divine right (*δόσα*) along with the god. A comparison of Midias and Alcibiades is another amplification of the attacks on Demosthenes and his cloak (§147). The last accusations concern Midias' bad performance of offices with religious associations, such as the equipping of one of the sacred triremes or participation in processions as a cavalry commander (§§171–4).

matter, whereas in the argumentation the political part still occupies more space. The last paragraph, however, gives the argument the final twist in a religious direction (§227):

πάντων οὖν ἔνεκα τῶν εἰρημένων, καὶ μάλιστα τοῦ θεοῦ χάριν περὶ οὗ τὴν ἑορτὴν ἀσεβῶν οὗτος ἤλωκεν, τὴν ὁσίαν καὶ δικαίαν θέμενοι ψῆφον τιμωρήσασθε τοῦτον.

For all the reasons I have given, and especially for the sake of the god in connection with whose festival he has been caught acting impiously, cast the vote which is just towards gods and men, and punish him.

The aim of this rapid survey of the speech has been to show how Demosthenes gradually introduces the religious aspect to the speech. The longest passage without any such references is the narrative of the previous history of the conflict covering about thirty paragraphs. Otherwise the speech is interspersed with remarks about how Midias' acts had affected the religious realm or (later) how he did not care about the god of the festival. By this device Demosthenes keeps this aspect of his prosecution in his audience's minds. The question remains whether they believed that it was important when they entered the court.

In fact, the building up of references to this facet of the charge indicates that the audience might not have expected an argumentation relying heavily on the impious character of Midias' deed. It does not seem unlikely that the average dikast would have viewed the whole affair as only one episode in an ongoing private and public struggle.¹⁸ The rivalrous political activity of the opponents may have confirmed this impression. Demosthenes might have tried to use Midias' punch to exclude him from politics by a severe penalty.¹⁹ So most of all Demosthenes has to shake up the dikasts' probable view that the incident in the theatre was insignificant beyond the level of merely private animosity.²⁰ Even if the dikasts anticipated that Demosthenes would question Midias' piety (just because this was a *topos* of invective), they might not have bargained for the extent of impiety argumentation.

Against this background the development and slow increase of significance and seriousness of the religious argumentation makes good sense: Demosthenes would startle his audience, if he pressed the ἀσέβεια argument too much from the start. By preparing it, by a casual remark about the sacredness of the destroyed cloaks and the law, he can make the transition from the affected civic to the affected divine sphere look quite natural. Demosthenes manipulates the views and common perceptions of the audience. He attributes a significance to central aspects of his argumentation that is not confirmed by independent evidence on

¹⁸ Cf. D. Cohen (1992).

¹⁹ This did not have to go as far as the death penalty or expropriation he proposes. A large sum of money or even the damage of his reputation by a conviction might have been enough to endanger Midias' standing among the orator and politicians. The public might have regarded the trial as a case of battle between rival politicians outside the political arena, cf. the presence of the politician Eubulus.

²⁰ Cf. Kurihara (2003), 475–6.

these matters. We have to allow for his skill in presenting arguments the dikasts would not have expected and would perhaps not even accept after giving them a second thought. There is a good chance that they would have regarded the allegation of ἀσέβεια as far-fetched or irrelevant in the first place, but with Demosthenes' preparation they were willing to give it a hearing after fifty paragraphs of the speech.

Demosthenes in many instances exaggerates or distorts the facts.²¹ His tactic with regard to the incidents concerning the Dionysia is to enhance their religious significance by equating his status as a choregos to three groups with different functions: choristers, magistrates, and priests.

Firstly, he justifies his remarks that Midias' punch might be called impiety by some oracles ordering sacrifices, the performance of choruses, and the wearing of crowns in order to honour the gods. Not only the laws, he says, but the oracles, too, demand these forms of worship. In this way he claims a higher authority (the gods themselves who have given the oracles, that is Apollo and Zeus) for these customs. Having had several oracles read out by the clerk he paraphrases them again (§§54–5):

τί οὖν ἐκ τούτων ὑμᾶς ἐνθυμείσθαι δεῖ; ὅτι τὰς μὲν ἄλλας θυσίας τοῖς ἐφ' ἐκάστης μαντείας προφανομένοις θεοῖς προστάττουσι θύειν, ἰστάναι δὲ χοροὺς καὶ στεφανηφορεῖν κατὰ τὰ πάτρια πρὸς ἀπάσαις ταῖς ἀφικνουμέναις μαντείαις προσαναυροῦσιν ὑμῖν. οἱ τοίνυν χοροὶ πάντες οἱ γινόμενοι καὶ οἱ χορηγοὶ δῆλον ὅτι τὰς μὲν ἡμέρας ἐκείνας ἃς συνερχόμεθα ἐπὶ τὸν ἀγῶνα, κατὰ τὰς μαντείας ταύτας ὑπὲρ ὑμῶν ἐστεφανώμεθα, ὁμοίως ὅ τε μέλλον νικᾶν καὶ ὁ πάντων ὕστατος γενήσεσθαι, τῇ δὲ τῶν ἐπινικίων ὑπὲρ αὐτοῦ τότε ἤδη στεφανοῦται ὁ νικῶν.

What inference should we draw from these [oracles]? That, besides instructing you to make the sacrifices to the gods specified in the case of each oracle, they also command you to establish choruses and to wear crowns in accordance with tradition, in addition to all the oracles which come on every occasion. So it is plain that all the appointed choruses and choregoi throughout those days when we assemble for the contest wear crowns on your behalf, in accordance with these oracles – all of us alike, both the one that is going to be the victor and the one that is going to come last of all; it is only for the day of the victory celebrations that the victor puts a crown on for himself.

The oracles Demosthenes cites obviously do not deal with the Great Dionysia and the dramatic and dithyrambic competitions.²² That means the responses do

²¹ Cf. most obviously §§144–7 with MacDowell (1990), 358–63.

²² Of the oracles transmitted in the manuscripts the one in verse seems to require a harvest festival, the last one a holiday of a single day, so that neither applies to the extended festival in the spring. They are commonly acknowledged as authentic, but might not be the ones actually meant for citation at the trial, cf. MacDowell (1990), 270–1. There is also doubt about their date, cf. Fontenrose (1978), 188, though Harris (1992), 75–8, who denies the authenticity of the laws, does not seem to include the oracles in his doubts. In any case, they do not seem exactly relevant to the case, but Demosthenes' paraphrase does not indicate that the 'original' documents would have been a better match.

not relate to the particular circumstances under which the choruses there performed. What is more important, the oracles do not speak of a choregos or any sort of competition. The choregos creeps in when Demosthenes draws his conclusion.²³ He employs the same device of equating choristers and choregoi when he speaks about the prohibition against accosting choristers; there is good reason why the two groups should be treated differently.²⁴ Demosthenes thus fuses the two functions in a way not supported by the documents. He links the choregos to the oracles and claims for himself the protection granted to the choristers.

With regard to the crown, Demosthenes again seems to alter the sense of the oracles. They do not restrict the use of crowns to a group of people to set them apart from the attendants of the festival. The last response states explicitly that even slaves, that is, non-citizens, should wear crowns.²⁵ So the special status Demosthenes asserts for himself and the choristers cannot be based on the oracles which order crowns for participants and spectators indiscriminately. In order to decide whether the claim of a special (religious) standing in the Dionysia is justified, we have to turn to independent evidence. The information about choregoi that can be won from archaeological sources is without value for the present issue.²⁶ We may only assume that Demosthenes could not invent a 'typical feature' before an audience familiar with the conventions of the Dionysia. He might, though, exaggerate the conspicuousness of the connection between choregos and crown.

As to the crown of the winner and the one worn during the festival Demosthenes is certainly right in making this distinction. A passage in Lysurgus shows that the victory crown could be viewed as the property of a private person.²⁷ Both passages hint at the same point and may therefore represent a common perception.

²³ Choregoi are mentioned first in the sentence *οἱ τοίνυν χοροὶ* . . . , cf. MacDowell (1990), 275.

²⁴ §§56–7; MacDowell's argument (1990, 227) seems very plausible that for the scrutiny of choristers a penalty must be paid because it affects the chorus' performance. This is not true for the choregos.

²⁵ Blech (1982), 303 n. 154 gives parallels from other cities. This was obviously the case in earlier times at the Dionysia as well, cf. Philochorus *FGrH* 328 F 171. Even if the oracle was added later, Demosthenes' *ἰστάναι χορούς* and *στεφανηφορεῖν* in §54 suggests that the whole city wore crowns.

²⁶ Of the only Athenian vase certainly depicting a choregos nothing is extant but a shard with his legs (photograph in Kanta (1979), 143, fig. 77. 1). The paintings on two hydriai contain one person each who can perhaps be identified as choregoi. On the one (Boston 03. 788) the choregos (described in the Beazley archive as a 'draped youth') watching a group of satyrs wears a crown, on the other (Ferrara 3031; cf. Beazley (1955), 310 11, again showing satyrs) he and one of the satyrs do not. A vase from Southern Italy which clearly has a connection to Athenian drama represents a comic and a (presumably) tragic character together with two pot-bellies identified as choregoi. None of the figures wears a crown. However, the term 'choregos' may have a different meaning in its Italian context, cf. Gilula (1995), 9–10, and in any case the scene depicted is not set in the theatre itself, cf. Taplin (1993), 58–63.

²⁷ Lysurg. 139: stating that the award of such a crown does not confer benefit on others, he suggests that there is no longer a connection to the community. This was only the case as long as the choregos was 'in service'.

Demosthenes' whole argument about the winner's crown, however, seems to be beside the point. It does not at first sight become apparent why he draws this distinction. However, it makes sense if the choregic crown was associated first of all with the winner of the contest and his victory celebration.²⁸ If that is so, Demosthenes by highlighting the differences to his case once more insists that Midias' punch was not just a clash of private individuals. But he also reveals that neither the public nor the (even more significant) specifically religious dimension of the accusation was obvious. If people when they heard of a choregic crown were reminded of the winner, they may have associated it rather with a private party. In that case the respect for the crown-bearer and his 'sacred' status would have been far less²⁹ than in the case of a performing chorister. Punching such a crown-bearing choregos was a less serious matter. The claim that it was *ἀσέβεια* required justification to seem plausible. Demosthenes, therefore, has to suggest that the sacredness the winner's crown lacks in public opinion is still an attribute of the choregic crown. Only if he manages to manipulate the view of his audience, that is if he can convince them that his status when punched was different from that of a mere victor (closer to that of the performing chorister), can he claim more easily that violation was a sacrilege.

The same effect of enhancing Demosthenes' status is secondly achieved by making a connection with the officials of the city who enjoyed a 'sacred' status. Already before he mentions *ἀσέβεια* he equates choregoi with archons by reference to the crown (§33). Modelling himself into someone holding public office gives him the opportunity to claim the same standing as a magistrate. The sacredness of office-holders, indicated by the crown, was undisputed.³⁰ So when Demosthenes asserts that he wore the crown 'on your behalf' he clearly alludes to the magistrates' crowns and suggests a direct link between the archonship and the

²⁸ How important a public event the thanksgiving sacrifice was is illustrated by the reference to it in Pl. *Symp.* 174 A.

²⁹ Even the crown that was worn on a private occasion had religious significance. Its origin from cult is sometimes still felt; cf. Blech (1982), 64 5, 73; Schmitt Pantel (1995), 101. This means that Demosthenes cannot simply distinguish between a 'sacred' public and a 'secular' private crown. These distinctions, if taken absolutely, have proved to be senseless for Greek religious life, anyway, cf. Kearns (1995), 513 and above, Introduction. All crowns thus constituted a closer connection to the gods and a sort of 'sacredness' (Parker 1983, 153, referring to Wilamowitz 1895, ii. 156); there was, though, a difference in degree. As early as the late 5th and 4th cc., it is noticeable that the relation of crown and sacredness became weaker, all the same: many sources show that the crown has become nearly a symbol of excessive drinking (Ar. *Ach.* 1145, *Eq.* 534, *Eccl.* 131 3 of alcoholics identifiable by the crown). Plato criticizes the young and their revelries mentioning the crowns they wear (*Rep.* 560 E, 573 A). Athenaeus also complains about the difference between cultic origin and contemporary profane customs (5. 192 B). But this complaint is an indication that symposia could still be associated with purity in his time.

³⁰ Aeschines (1. 19) can say of a law debarring 'prostitutes' from the archonship and other magistracies that this statute had been given to exclude impure people from offices that were *σεφανηφόροι* (cf. Ch. 5 n. 108). Thus he partly uses the same religious categories as Demosthenes. It is a casual remark trying to explain the reasons for the law, so he is unlikely to refer to ideas far from the dikasts' convictions; the requirement of purity for magistrates is well attested, e.g. Lys. 6. 4 and for a magistrate's wife Dem. 59. 85 7.

choregia. However, the equation of the two duties in terms of protection by the authority of the crown is clearly wrong. Demosthenes insinuates a parallel that is not quite as strong as he would like to have it.³¹ The choregos was probably not officially acknowledged to enjoy special protection.

It appears that the choregia was not even regarded as a particularly sacred office. It is much more of a duty that consists in the expenditure of a large amount of money. The typical choregos was first of all the rich individual,³² not the humble servant of the people, the δῆμος, or the god. Choregoi other than Demosthenes do not allude to a religious activity or to pleasing the gods, when they stand trial. Instead, they emphasize the money they have spent. They, too, declare that they do it for the people, but they do not count among their merits that they have represented the δῆμος in the service of Dionysus. Thus the speaker of Lysias' *On a Charge of Accepting Bribes* tries to improve his image by enumerating the large number of liturgies he has undertaken. He obviously needs to defend himself from the attacks on his character the prosecution had made. So he undertakes to show the dikasts 'what sort of man I am, about whom you will cast your votes' (Lys. 21. 1) by listing all his liturgies and services to the state, from the Dionysia to military service, giving the exact amount of expenditures where appropriate.³³ There is no attempt to capitalize on piety expressed in the choregia, for example to enhance his service to the state or demonstrate his adherence to this particular virtue, nor is any distinction drawn between festival liturgies and others.

As we shall see, Leptines and his supporters defended their case against exemption from liturgies by claiming that the money was for sacred purposes.³⁴

³¹ First of all, for the man performing a liturgy there does not seem to have been a law like the one that fixed a penalty for any offence, in word or deed, against an archon. Otherwise Demosthenes would not have needed to rely on the *προβολή* to secure a verdict against Midias, or he could have referred to that particular law on choregoi to support his case. Similarly, the law cited by Aeschines defines the magistracies as allocated either by lot or by election, thus clearly not including liturgies, which were an entirely separate class of service, Aeschin. 1. 19.

³² Wilson (2000), 109. The financial aspect of the liturgy was the most obvious and the central one. Choregiae can be presented, together with paying the *εἰσφορά*, as indication of great wealth (Lys. 27. 10, Dem. 8. 70, Xen. *Ath. Pol.* 1. 13). A successful choregia was characterized by the attributes *καλός*, *μεγαλοπρεπής*, *φιλότιμος*, *φιλόνομος*, and similar words expressing splendour and expenditure, cf. *IG* ii². 1138, 1198, Isoc. 19. 36, Isae. 7. 40, Dem. 18. 257; the same point is made by Antiphanes *PCG* 202. 5. Accordingly, if one lost the competition (presumably because of meanness in the choregia), one *κακῶς ἐχορήγησεν* (Isae. 5. 36; cf. Eupolis *PCG* 329). The inscriptions on choregic monuments, the documents of the choregos' self-representation, do not allude to any religious character whatsoever in their performance and success; only poets do so (quite restrainedly), cf. Simonides or Bacchylides, *AP* 13. 28, from a later period e.g. Theoc. *Epigr.* 12. Cf. now also Goette (2007), 148, who speaks of the 'civic-mindedness and the contribution to the community', celebrated by the monuments.

³³ One has to take into account that the charge was obviously bribery, i.e. a financial matter. The speaker's point in this passage, however, is his service to the public (see Lys. 21. 11). In addition to the financial aspect of the choregia, Henderson (1990), 290 recognizes 'social-political skills' that are displayed by the choregos, but again these amount to little more than spending.

³⁴ Cf. Ch. 7.

Demosthenes brings forward only arguments regarding financial issues: he speaks of 'expenditures for ceremonies' (ἀναλώματα ἱερῶν, Dem. 20. 125). Even if the choregos' money contributes to making the sacred occasion more marvellous, the donor is not given a sacred status by this act. More than that, Demosthenes can strictly separate liturgies in the sense of public expenditures from religious expenditures (ἱερά), from which exemptions are not possible (§§126-7). There he manages to make the distinction despite the obvious connection of the choregia with the festival, which his opponents seem to have exploited.

If scholars have taken the solemnity of the choregia and the sacred status of the liturgist at face value,³⁵ they have been deceived by Demosthenes. He manipulates the image of the post in order to justify his claim for sacred standing. We can be reasonably sure that his interpretation of choregic sacredness was not what the average uninfluenced Athenian dikast would have accepted without qualification. The authority of the oracles (which actually say something quite different from Demosthenes' explanation) and the contrast to the crown at the (allegedly less sacred) 'award ceremony' and party suggest a privileged position, though certainly not one that has the extension Demosthenes hints at.

On the one hand, it seems, the crown conferred some sort of sacredness on its bearer. It always indicated a connection with the gods going beyond the normal relationship between the human and the divine. In this function it could even be a sign of sacrosanctity that protected the crowned person from any physical threat.³⁶ On the other hand, there were apparently different degrees of sacredness and protection. These might partly have depended on the majesty of the bearer's function and his relation to the state: at the end of the scale there were the crowns at symposia and the 'private' triumph of the winning chorus. The standing of the choregos during the competition may have been felt to be somewhere in the middle, but it was necessary to remind the audience that the situation was different from the subsequent celebration.

Demosthenes' claim for sacrosanctity does not even stop there, but he thirdly insinuates that he has a priest-like standing. He does not formally declare that he is as inviolable as priests, but quite early in his preparation he tries to give his duty a solemn image which assimilates him to a priest by emphasizing the sacredness of the destroyed cloaks (§16).

It is suspicious that Demosthenes calls the clothes he has prepared for the festival ἱερά (cf. above, p. 19). The dubiousness of this statement is affirmed by the following parenthesis on what has to count as sacred clothing. Sacred clothes are

³⁵ e.g. Bottin (1931), 471: the speech 'définit à merveille le caractère sacré du chorège'.

³⁶ That people wearing a crown enjoyed protection is demonstrated in Aristophanes' *Ploutos*. There a slave can complain about his master's blows by a reference to his crown. The master's answer is that in this case the slave will suffer when he has taken off the crown (vv. 18-23). This shows that the master at first does not care about the crown. When his attention is called to its meaning he respects it. The situation is that both come from the Delphic oracle and are trying to fulfil the order given by Apollo. Thus they are on a private sacred mission (Ar. *Pl.* 21 and scholia).

otherwise only known in relation to gods or priests, but no other people.³⁷ Demosthenes' terminology is thus questionable:³⁸ he attempts to confer a high level of solemnity and authority on his role in the Dionysia, but cannot assume that his audience is willing to follow his interpretation. It is strained and for this reason he can neither dwell on this point too long nor completely pass over the attribute of sacredness unless he wants to leave the court confused by the obscurity of his remark. The immediate aim of this pretence is obvious. A priest definitely possesses the status of inviolability, for he is 'a kind of walking temple';³⁹ so Demosthenes makes Midias' destruction of the cloaks seem closer to being a sacrilege by equating them with those of priests, which are viewed as untouchable.

There is no doubt that Midias' attack on Demosthenes disrupted the festival to a certain extent. Whether this constituted a clear instance of serious impiety is at least disputable. Certainly, Demosthenes plays up the status of the choregos, using an apparent lack of precise definition of his role at the Dionysia.⁴⁰ He associates his role with several functions that have both public and religious aspects to them and blurs them into an image that supports his case. By suggesting comparability to protected participants in the festivals, magistrates, and even priests, he enables himself to claim a position of religious importance. Thus he can present himself as sacrosanct, which makes Midias' physical assault a serious breach not only of ordinary public laws but even of sacred regulations. That means Midias has attacked someone of the highest standing in Athens. Once he has established the assertion that the offence touched upon the religious realm, he can refer to it more easily. Repetition will contribute by its own persuasiveness.

³⁷ The most famous example of a deity's sacred garment is the *πέπλος* of Athena. It is consecrated, though never called *ιέρως*, perhaps because it was famous enough to be simply called 'the *πέπλος* of Athena'. The Athenian heroine Pandrosos wore a *ἱερὰ ἔσθῃς* (Hesych. s.v. *ποδώνυχος*), and Alexander the Great acts as a god when he wears one (Ath. 12. 547 E). In Cos we find a priest with a *ἱερὰ στολή* (LSCG 151. 9 from the 4th c.); in literature Heliod. 5. 5. 4, 31. 2. There is not even firm evidence for a codified sacerdotal dress: Miller (1989), 319 cites only Eubulus PCG 71, which is no evidence for the sacredness of the garments.

³⁸ A scholion remarks that the orator adds the explanation of his personal concept of 'sacred' because otherwise that denomination would not be accepted (Schol. Dem. 21. 66): 'He has refuted the counterargument: "Sacred you say of the one you wear? You're not a priest, are you?"'

³⁹ Parker (1983), 175. There are enough instances to document the immunity and protection enjoyed by priests: for example, when Orestes recognizes his sister and embraces her, Euripides has either the chorus or Iphigenia herself say that it is not right to defile the goddess' priestess by laying his arms around the 'untouchable garments' (Eur. *IT* 798–9). Even if we allow for the parlance to be poetical, this remark shows that something of the sacredness and solemnity of the priest was transferred to his or her robe. The formulation does not make sense if the clothing belonging to and worn by 'sacred' people was not felt to be different from 'profane' wear. Historic instances: Alcibiades (otherwise notorious for being hubristic) releases priests without a ransom, Plut. *Alc.* 29. 5; Alexander the Great spares them from slavery, Plut. *Alex.* 11. 12.

⁴⁰ Obviously not all liturgies were regarded in the same way. The trierarchs, for example, appear to have had a much less aristocratic image and were not public figures in the same way as choregoi (Wilson 2000, 111–12; for the tension of aristocratic and democratic virtues of the choregia cf. *ibid.* 109–97). There might have been something like 'the' image of 'the' choregos, but Demosthenes (§153) suggests that in the individual case the self-promotion of the person performing the liturgy differed.

The Function of the ἀσέβεια Accusation in Connection with the Festival

Despite the fuss Demosthenes makes about his personal role, he leaves unused much of the potential buried in the accusations concerning Midias' misconduct towards the god, his festival, and his personnel. Describing the punch as an act of impiety, he could build a full accusation around this additional charge. One argument could run like this: Midias has committed an offence he could be prosecuted for in a *γραφὴ ἀσεβείας*. He has wronged the divine sphere and disregarded not only the laws but the commands of the gods, the oracles, by disturbing the festival they prescribe. So the gods may punish Midias and even the Athenians because he has defiled himself and offended the gods by showing his contempt towards their orders.⁴¹ A second approach would be to press the purpose of the cult regulations: sacrifices for the sake of health and good fortune as well as compensation for a missed sacrifice and sacred embassy. If the original texts were at least similar to these oracles and if Midias really disrupted the peace of the festival, the positive effect expected from the festival might fail. The sacrilege would then endanger the whole city's well-being by threatening its good relationship with the god. Relief could possibly be produced (and the god could be placated) by the expiatory punishment of the wrongdoer. This is what Demosthenes might hint at in his last sentence, when he asks the dikasts to convict Midias for the sake of the god (§227, cf. above).

However, Demosthenes does not exploit this argumentative potential. Religious arguments will be shown to have a largely subordinate and subsidiary function: the religious issues in the affair are not dealt with as primarily religious but as evidence of the offence being a public one.

It has been noticed how little Demosthenes actually says about religion and the god offended.⁴² To be precise, the underdeveloped theme is not the setting of the act in a religious surrounding but that of Midias' offence being one against the god and of the dangers arising from it. Demosthenes nowhere says what Athens is to expect or has to fear if Midias is allowed to live on unpunished. Even in §§51–5 he only gives a number of 'facts', but leaves the conclusion to the listener. All Demosthenes says is that the oracles give orders to wear crowns and establish choruses; choregoi wear crowns on behalf of the whole city in the precinct of the god. The passage given on p. 22 continues (§55):

⁴¹ If an offender against the gods is acquitted, the whole city is guilty: Lys. 6. 13, Dem. 59. 109; punishment that falls upon the environment as a consequence: Aeschin. 2. 158 (Hes. *Op.* 240–1), Antiph. 5. 82. The idea is directly expressed in Antiph. 2. 1. 3 and 3. 3. 11, but these were not real forensic speeches. In those the motif was not exploited (Carawan (1993), 250–1).

⁴² Fisher (1992), 47 'It is notable, and perhaps rather surprising, that Demosthenes does not exploit religious argument and emotions more than he does in the speech as a whole; he appears relatively rarely to attempt to suggest that Meidias' behaviour should be called *hybris* against the gods.'

τὸν οὖν εἷς τινὰ τούτων τῶν χορευτῶν ἢ τῶν χορηγῶν ὑβρίζοντα ἐπ' ἔχθρα, καὶ ταῦτα ἐν αὐτῷ τῷ ἀγῶνι καὶ ἐν τῷ τοῦ θεοῦ ἱερῷ, τοῦτον ἄλλο τι πλὴν ἀσεβεῖν φήσομεν;

So when a man treats any of these choristers or choregoi with insolence, out of enmity, and that while the contest is actually in progress and in the precinct of the god, can we deny that he is guilty of impiety?

The name Midias does not appear except once in a very cautiously formulated sentence at the start of the passage.⁴³ In the rest there is no fierce invective against him. Demosthenes never states that Midias is in fact guilty of impiety or that he has acted against the orders of the god. Nor does he draw any conclusions from the impious element in Midias' offence, either that Midias must be punished or that the god may be offended and strike back.

Demosthenes does not make up for the good opportunity he has just missed to tell the audience of the possibility of the gods' revenge. He never chooses to evoke that idea, though it may be in the back of some listeners' minds. Only those who are responsive to this sort of argument from the outset may have this association.⁴⁴ Instead of talking about beliefs or gods, Demosthenes exploits religion in as much as it was closely interlinked with the state. The Dionysia were highly suitable for this purpose. The festival was exploited in particular for political ends in many ways.⁴⁵ For this reason Demosthenes can exploit the broad overlap between the religious and the state community. The (alleged) religious aspects of the occasion and the offence can always be depicted as indicative of civic relationships in the wider context of the πόλις.⁴⁶ In most instances in which Demosthenes draws on a religious concept he makes no distinction between them: the attack on him concerns both aspects of public life at the same time. Infringement of the rules of the gods' worship is inseparable from that of the rules of the community.

For example, disrespect for the festival meets the disapproval of the people and is thus disrespect for them. This is the reason why the choregoi keep away from a disqualified chorus-leader despite their ambitions (§§60–1):

⁴³ εἰ μὲν τοίνυν, ὦ ἄνδρες Ἀθηναῖοι, μὴ χορηγὸς ὢν ταῦτ' ἐπεπόνθειν ὑπὸ Μειδίου, ὕβριν ἂν τις μόνον κατέγνω τῶν πεπραγμένων αὐτῷ· νῦν δέ μοι δοκεῖ, κἄν ἀσεβεῖαν εἰ καταγινώσκου, τὰ προσήκοντα ποιεῖν (§51); Demosthenes softens his statement that Midias has perpetrated an act of ἀσέβεια by saying μοι δοκεῖ, using the potential mode and packing everything in a conditional clause, i.e. not making the statement himself.

⁴⁴ There seem to have been certain limits or an unwritten code of what orators were allowed to say with regard to dangers to the city. We find, for example, no instance of a speaker openly terrifying the audience by the prospect of divine anger or enmity against the city. Instead, the divine remains an abstract entity. The gods' names occur very rarely in forensic speeches, cf. Meuss (1889), 465–6, Carey (1999), 373–4. However, this is not a sufficient explanation for Demosthenes' restraint (cf. below, Chs. 4 and 5). It is only that the consequences are not spelt out and their mention and graphical description is more or less ostentatiously avoided.

⁴⁵ Cf. especially Goldhill (1990). By the award of honorary crowns and the presentation to war orphans of military equipment at public expense commitment to the state was promoted.

⁴⁶ Put positively, piety is associated with civic virtues: the laws on *προβολή* are called an effect of Athenian piety (εὐσέβεια) and philanthropy (§12). It shows respect and correct behaviour towards gods and men – presumably by securing the proper and orderly conduct of the ritual and other activities.

ἀλλ' ὅμως πολλῶν χορηγῶν φιλονικησάντων, οὐδεὶς πώποτε τοῦτ' εἶδε τὸ πλεονέκτημα, οὐδ' ἐτόλμησε τοῦτον ἐξαγαγεῖν οὐδὲ κωλύσαι. . . τῶν μὲν νικᾶν ἂν παρὰ τοῦτ' οἰομένων χορηγῶν, τῶν ἀνηλωκότων πολλάκις πάντα τὰ ὄντα εἰς τὰς λητουργίας, μηδὲνα τολμήσαι πώποτε μηδ' ὧν οἱ νόμοι διδῶσιν ἄψασθαι, ἀλλ' οὕτως εὐλαβῶς, οὕτως εὐσεβῶς, οὕτω μετρίως διακεῖσθαι ὥστ' ἀναλίσκοντας, ἀγωνιώντας ὅμως ἀπέχεσθαι καὶ προορᾶσθαι τὰς ὑμετέρας βουλήσεις καὶ τὴν περὶ τὴν ἑορτὴν σπουδὴν. . .

And yet, though there were many choregoi eager for victory, none of them ever took advantage of this or ventured to remove him or stop him. . . . Of all the choregoi who thought this would make them victorious, and who had in many cases spent all their money on liturgies, not one ever ventured to touch even those whom the laws permit them to; their attitude was so cautious, so pious, so restrained that, despite their expenditure and their rivalry, they still held off, and took notice of your wishes and your enthusiasm for the festival. . .

The episode is still narrated in the context of the ἀσέβεια allegation. The characterization of the choregoi as cautious and restrained employs terms that express the fear of alienating the audience and modesty on a merely human or (in particular) democratic level.⁴⁷ εὐσεβεία must have a related denotation. The close connection between virtuous behaviour on the human and on the divine level might suggest that Demosthenes sees them as (partly) coinciding. Anyway, not doing what Midias has done obviously meets the criteria of both categories.

Only in the final paragraphs is religion in the foreground. Demosthenes calls upon the dikasts to convict Midias, reminding them of the reaction of the people at the Dionysia and shortly afterwards. He mentions again that Midias caused anger among the attendants (§226). So the dikasts should do a favour to the δῆμος and establish security for the future. Then, in a sudden turn, in his last sentence Demosthenes asks them to convict him, above all, for the sake of the god. He ends his speech with the remark that this would be a just vote as regards both human and divine justice. Again, the two realms are juxtaposed. The emphasis on the god is unique to this passage but in line with the practice of building up pathos in the peroration.⁴⁸

In the preceding passages Demosthenes does not make it clear to us in what way the religious and civic sphere are linked. He emphasizes the venerability of both realms, symbolized, for example, in the crowns, but makes no distinction (apart from the last sentence) in terms of the importance of a conviction. In the religious aspect punishment is not described as having a purpose different from that of the civic offence. Thus the two charges receive a parallel treatment; in some respects, they seem complementary, but whereas the political aspects of the case can be presented in isolation, the same is not true for religion.

However, sometimes Demosthenes brands certain acts as impiety, not so much in order to highlight the religious element as to mark them as particularly serious

⁴⁷ For μετρίως cf. e.g. Dem. 18. 278, 24. 6, 58. 29. The adjective is 'a favourite word in democratic states' (LSJ s.v. III 3), e.g. Dem. 18. 10, 126, here also §§134, 185, Isae. 7. 40.

⁴⁸ Cf. Schol. Dem. 21. 728.

offences.⁴⁹ ἀσέβεια serves as a manifestation of Midias' self-interested ὕβρις that results in his contempt for society: in this perspective, it is subordinate to society and relevant only in so far as it is an insult against public opinion and the public interest. Good religious conduct formed part of what was expected from an orderly citizen and thus of the set of civic values. By contrast, behaviour that does not conform to the people's view of piety evokes an angry reaction from them.

The overlap of religious and political status is most obvious in the function of the archons. Their crowns are not just a religious symbol but signify at the same time that they are in office. When Demosthenes points out that he was attacked in a sacred period, it looks as if he were clearly emphasizing the sanctity of the festival and its religious character. But he alludes to the double aspect of his activity: he is on public duty on a sacred mission. Moreover, in the end Demosthenes stresses the civic side of the festival: the 'sacred' law that instituted the *προβολή* is given by the people (§§34–5) and the wrongdoer is only subjected to public anger (*δημοσία ὀργή*) and punishment.⁵⁰ So the religious aspect is confined to a subsidiary role: the fact that it is a sacred period is relevant because this makes the attack on the choregos a violation of the law;⁵¹ moreover, the religious misdeed has consequences only in the civic sphere as it provokes the *δήμος*.⁵²

Likewise, the central point in the comparison of Midias and Alcibiades (§§143–50), both of whom struck an acting choregos, is the Athenians' reaction to the latter's insolence. The aspect of impiety is subordinate to the outrage he provokes among the people. By contrast, the fact that a god is concerned earns no mention as such. All Alcibiades' acts are called ὕβρις against the citizen body which the Athenians were not prepared to tolerate: 'Your ancestors in [Alcibiades']

⁴⁹ In a minor instance of the juxtaposition of civic and religious aspects Demosthenes stresses that the punch was a particularly serious instance of ὕβρις because the incident took place for all the world to see and in the precinct of the god: the case of Euaeon, who had been hit by Boeotus and killed him in turn, had less potential of ὕβρις because it did not happen before a crowd, and because Boeotus was drunk (§§73–4). The place where the incident took place seems significant only in as much as it is necessary or not to go there: Euaeon was hit at a dinner in a private house 'where he need not have gone at all.' So none of the religious characteristics mentioned in connection with Midias is picked up. The difference is one between a public event and a humiliating act in private.

⁵⁰ In addition, the sacred season is paraphrased as the days 'on which the laws do not allow [to act with ὕβρις against a choregos]', thus making the sacred context subordinate to the rule of man-made laws.

⁵¹ §34 ἅμα γὰρ τῷ Δημοσθένει καὶ ὁ χορηγὸς ὑβρίζειτο, τοῦτο δ' ἐστὶ τῆς πόλεως, καὶ τὸ ταῦταις ταῖς ἡμέραις, αἷς οὐκ ἐῶσιν οἱ νόμοι.

⁵² Demosthenes goes on to show how the law takes account of and regulates affairs of cult: ordinary penalties were not sufficient for offences against the festival, so the Athenians made a law. The sacred law (*ἱερὸς νόμος*), as it is called, has (so Demosthenes says) been given in honour of the god. This is expressed in a way that suggests particular venerability of the god and his festival. Demosthenes leaves unexpressed that the offence would be impiety. It is rather the expression of the people's will to pass a special law for the very occasion that makes the offence more serious. The fact that an extra law (for the god) exists beside the ones on damages etc. and that Midias was liable under it is interpreted as particularly significant, as Midias has deserved not just punishment in the more general procedures, but even in the specific one.

time did not concede, in return for any of these things, that he should treat them insolently; they turned him out and sent him into exile' (§146).⁵³

Alcibiades' punch is not singled out for its religious significance. Demosthenes tries to put the ἀσεβήματα of the mutilated herms in a parallel with the destruction of the 'sacred' garment; the gist of the entire passage, however, lies in the ὕβρις in everything Alcibiades had done that finally led to his exile. The religious misdemeanour is only a circumstantial aspect, revealing the degree of Alcibiades' ὕβρις. The result of the comparison is that Midias' misdeeds were much worse than Alcibiades': he destroyed sacred objects, he did not just damage them. This may imply a higher degree of both ἀσέβεια and ὕβρις. Yet Demosthenes says that all ἀσεβήματα evoke the same anger (ὀργή, §147 as in §34).⁵⁴ So the reference to the reaction of the public indicates that it is again the attack on the citizens who then intervene rather than on the god that is decisive. The outrageousness, not the religious character of the act, is the reason for Alcibiades' exile. In the conclusion Demosthenes states (§148):

μη τοῖνον ὑμῖν, πρὸς τῷ μὴ καλόν, μηδὲ θεμιτὸν νομίζετε, ἄνδρες δικασταί, μηδ' ὅσιον εἶναι τοιούτων ἀνδρῶν οὖσιν ἀπογόνους, πονηρὸν καὶ βίαιον καὶ ὕβριστήν λαβοῦσιν ἀνθρώπων καὶ μηδένα μηδαμόθεν, συγγνώμης ἢ φιλάνθρωπίας ἢ χάριτος τινος ἀξιώσαι.

You must consider that, besides not being praiseworthy, it is not even correct or in accord with divine right for you, descended from such distinguished forefathers, when you have in your hands a person who is bad, violent, and insolent, a nobody and son of nobody, to grant him any pardon, kindness or favour.

The terms καλόν, θεμιτόν, ὅσιον, which describe the Athenians' obligation to condemn Midias, comprise both religious and non-religious aspects;⁵⁵ but of the three adjectives that describe Midias' character (πονηρός, βίαιος, ὕβριστής), none has a religious meaning. Similarly, the entire comparison is based on the statement that the Athenians did not tolerate Alcibiades in the city because he was 'impertinent and hubristic' (βδελυρὸς καὶ ὕβριστής, §143). So ὕβρις, the defiance of and contempt towards the accepted norms of behaviour and the provocation of the people, cost him his citizenship. The contravention of religious rules is secondary

⁵³ Demosthenes' account differs from that of the spurious *Against Alcibiades* (Andoc. 4. 20 1), where Alcibiades is reported to have gone scot-free after the attack. The speech was probably written in the early 4th c., cf. Edwards (1995), 131 6, Hefner (2001) against Gribble (1997). Furlley (1989) and Gazzano (1999), pp. xlviii lvi even argue in favour of authenticity and composition in the 5th c. It is certainly more reliable than Demosthenes' account.

⁵⁴ On ὀργή as 'a central term in the ethical discourses that produced Athenian definitions of the good citizen, justice, and just behaviour,' cf. Allen (2003), esp. 78.

⁵⁵ MacDowell (1990), 364 5 tries to give a rough definition of the three terms. He states that the religious content of θεμιτόν depends on the belief (sc. or intention) of the speaker but one might as well say the notion depends on the listener. For ὅσιον a connection with religion clearly exists. The combination of ὅσιον and θεμιτόν is unique in classical Greek (but cf. Dem. 25. 81), perhaps substituting that of ὅσιον and δίκαιον. Even the scholiast (Schol. Dem. 21. 511) has to admit that he does not know the exact meaning of these words.

in this context; it only makes the offence more serious, but does not change the nature of the conflict with his fellow citizens.

Even where Demosthenes accuses Midias straightforwardly of ἀσέβεια, the religious aspect is subordinate (§§199–200):

τίς γάρ ἐστιν ὅστις καταχειροτονηθὲν αὐτοῦ, καὶ ταῦτ' ἀσεβεῖν περὶ τὴν ἑορτήν, εἰ καὶ μηδεὶς ἄλλος ἐπὶ ἄγων ἔτι μηδὲ κίνδυνος, οὐκ ἂν ἐπ' αὐτῷ τούτῳ κατέδυν καὶ μέτριον παρέσχευεν ἑαυτὸν τὸν γε δὴ μέχρι τῆς κρίσεως χρόνον, εἰ καὶ μὴ πάντα; οὐδεὶς ὅστις οὐκ ἂν. ἀλλ' οὐ Μειδίας, ἀλλ' ἀπὸ τῆς ἡμέρας ταύτης λέγει, λοιδορεῖται, βοᾷ.

Who, when there had been a vote against him, and that for impiety concerning the festival, even if no other trial or jeopardy still impended, would not have, on that ground alone, kept a low profile and conducted himself modestly, at least for the period until the trial, if not for ever? Anyone would have done that. But not Midias; from that day on he speaks, he reviles, he shouts.

The reformulation of the charge seems to intensify the religious aspect of the offence. If the context is considered, however, the question whether the realm of religion is touched upon or not turns out to be irrelevant. Demosthenes speaks about Midias' defiance and the social consequence of an acquittal. The idea of impiety is restricted to the adverse verdict in the assembly, while the real reproach is of Midias' behaviour towards his fellow citizens. Thus even rebranding the charge ἀσέβεια does not lead to a specific exploitation of the religious allegations.

The numerous lists of people and goods mistreated by Midias show this 'unprivileged' role of religion and the god. In these lists the divine sphere is given the same share as Demosthenes, the people, or the laws (§126):

οὐκ ἔστ' ἐφ' ὅτῳ τῶν πεπραγμένων ἐγὼ μόνος ἠδίκημαι, ἀλλ' ἐπὶ μὲν τοῖς εἰς τὸν χορὸν γεγενημένοις ἀδικήμασιν ἢ φυλῇ, τὸ δέκατον μέρος ὑμῶν, συνηδίκηται, ἐπὶ δ' οἷς ἔμ' ὕβρισεν καὶ ἐπεβούλευσεν οἱ νόμοι, δι' οὓς εἰς ἕκαστος ὑμῶν σῶς ἐστίν. ἐφ' ἅπασι δὲ τούτοις ὁ θεός, ᾧ χορηγὸς ἐγὼ καθειστήκειν, καὶ τὸ τῆς ὀσίας, ὁτιδύποτ' ἐστίν, τὸ σεμνὸν καὶ τὸ δαιμόνιον.

There is not one of his actions which is an act against me alone. The offences done to the chorus are also offences against the tribe, one tenth of yourselves; the insults and plots which he directed against me are against the laws that preserve every one of you; and all of them are against the god, for whom I had been appointed choregos, and the majesty and supernatural element of divine right, whatsoever it is.

The god is treated like the citizens, a victim of the bully who does not care about anything in his acts. The description of Midias mistreating the god like laws and fellow citizens fits into Demosthenes' overall strategy of depicting his opponent as hubristic to a degree that cannot remain private: he is a ruthless rich individual who need not be concerned what impression he makes on others. Demosthenes tries to alienate the audience from Midias by depicting him as

deviating from the norm of the good citizen; he demonstrates his opponent's 'otherness'⁵⁶ if compared with the ordinary and orderly citizen the *dikasts* are supposed to represent. Midias does not regard public opinion as valid for himself nor does he stay within legal boundaries.⁵⁷

Demosthenes in this way exploits the identity of the cult community of the Dionysia and the *πόλις*. By his trespasses at the festival Midias also excluded himself from, and turned against, the political community.⁵⁸ The public and even the state as such is concerned by Midias' behaviour. The clearest indication of Midias' attitude against the democratic *πόλις* is the reference to the equal opportunity of all contestants in the competition that makes the choregoi take on that job – and that is undermined by Midias (§67): other people volunteer for a choregia because they are eager for honour and believe that the democratic constitution gives them an equal chance of winning. Midias, by contrast, subverts the fair competition by choosing illegal means to influence it. His assault on the choregos and his equipment shows his insolence and anti-democratic spirit. The punch which Demosthenes associates with *ἄσέβεια* arises out of personal enmity, but it is directed against the whole system of the choregia. For Midias disregards the means that are at his disposal to fight Demosthenes in a way that benefits or at least does not damage the community.

If he had challenged Demosthenes' chorus in the regular way (that is by correctly participating in the festival and taking on the choregia of his own tribe) he would have proved himself a true member of society (§§68–9).⁵⁹ Examples of others show that self-restraint would have been a proof of desirable *εὐσέβεια*. Midias, however, does not feel this respect for the Athenian people, which is incensed if the rules of *εὐσέβεια* are not observed.⁶⁰ Iphicrates, by

⁵⁶ The two most recent analyses of the speech show different but not incompatible images of Midias. Ober (1994, esp. 94–5) concentrates on Midias' riches, which Demosthenes presents as his means of suppressing the ordinary population. Because of his wealth he can afford to insult others, for he will be able to delay any trial and to corrupt everyone in order to buy himself free. He can easily destroy those who impede the fulfilment of his desires. Wilson (1991, 185–6) shows how Demosthenes presents his rival's 'otherness' by moulding him into stock figures from the dramatic stage: the tyrant, the changeling, the barbarian slave. Doing this he exploits the fear of outsiders in Athens. These images can be reconciled if we accept the separation of Midias from the citizen body as the general idea, expressed in the term 'otherness'.

⁵⁷ e.g. §§61, 66, 91–2.

⁵⁸ For himself Demosthenes insists on the idea that he is the choregos of his tribe (that is 10 per cent of the citizen body), the chorus belongs to the *πόλις*, etc. (e.g. §§26, 126). He also mentions that the crowns are worn 'on your [the Athenians'] behalf' (§55). The following examples accentuate Demosthenes' citizenship by contrast with all those who did not possess it when they suffered maltreatment at the festival (§61).

⁵⁹ But he is shown in other examples not to know how to behave: in the case of the rival choregoi who do not oust a non-citizen from the chorus (§§60–1) it is clear that their *εὐσέβεια* partly means that they do what is expected of them. They comply with public opinion, that is they avoid what is unrighteous in the people's view.

⁶⁰ It is worth noticing that the essence of *εὐσέβεια* often seems to be self-restraint, cf. Cairns (1993), 208 n. 111. Demosthenes too has made this point clear in the preceding passages (§§59, 61). The usage here is very similar to that in §12 (parallel to philanthropy).

contrast, 'yielded to the laws and the wishes of other people, and he put up with seeing his enemy crowned. Of course he did; he thought it right to yield in such matters to the *πολιτεία* to which he owed his own success' (§63). For him the preservation of the *πολιτεία* (the constitution and way of life of the civic community)⁶¹ transcends the value of individual success. The passage follows close upon the argument on *ἀσέβεια* and the acts described are closely linked to those that are associated with impiety. Thus there is continuity from the *ἀσέβεια*-part to this example, and the impious acts are in retrospect characterized as lack of self-restraint. In this way Midias' (potential) *ἀσέβεια* is clearly depicted as an exit from the *πολιτεία*. The breach of *εὐσέβεια* (a virtue closely connected with conformity with the rules of the society)⁶² adds to his increasing separation from the *πόλις*.

So an offence against the religious rules and customs is at the same time an offence against society, and it is Demosthenes' foremost goal in the speech generally to show that Midias does offend society. The consequences which an acquittal would have for each single dikast and his security, and of which Demosthenes warns (§§220–2), also remain on the civic level: the moderate, materially less powerful citizens will be haunted by Midias and his like, as the power of the *δῆμος* as a whole is subverted. In a similar way, the religious aspect of the prosecution can be seen as a means to make the offence and outrage more significant. By his wealth Midias might be stronger than the laws, but he even despises the god, for whom Demosthenes has taken on the choregia, and treats him inappropriately (§126). The divine is an object by which to amplify the seriousness and outrageousness of specific acts. In the end, Midias' acts look more hubristic and offensive, and the transgression of the private level is made more obvious by including the religious sphere in his argumentation.

Demosthenes, it appears, cannot rely on the people's readiness to accept Midias' punch as a public offence, much less as a case of *ἀσέβεια*. Therefore, if he wants to use this charge against his opponent, he has to prepare his audience for the open accusation. To make it more plausible that one can link Midias' punch with *ἀσέβεια* he heightens the degree of impiety by assuming several roles: he claims for himself the same status as a chorister and models himself after an archon and even a priest. He increases his own sacredness so as to make the attack on him an act of greater insolence. By this device he exploits the fact that the status of the choregos in relation to the public was open to a broad range of interpretations. Thus he could suggest the one that suited him to the audience.

⁶¹ The Greek term denotes 'the whole organization of public life in Athens' (MacDowell 1990, 283) and its several aspects, cf. LSJ s.v.: among others '*condition and rights of a citizen, citizenship*', '*the daily life of a citizen*' and '*civil polity, constitution of a state*'.

⁶² Cf. Fisher (1992), 145 on the events of 415. There (as in his other examples of *ὑβρις* against a god), *ὑβρις* constitutes not just an affront against deities and beliefs, but also against 'the solidarity and cohesion of the society'. *εὐσέβεια* can even be defined as sticking to the rules of the *πόλις*, cf. Xen. *Mem.* 1. 3. 1, *Hell.* 1. 7. 25, Isoc. 7. 30.

We have seen three functions or ways in which the religious elements in the speech work: the first one, which is not expressly mentioned (hinted at only at the very end), but which may nevertheless be effective for part of the audience is the demand to retaliate by punishing Midias on behalf of Dionysus. From this point of view ἀσέβεια is an offence in itself and must be punished as a misdeed related to the gods. The Athenian court thereby expiates the impiety committed by one of its members in order to prevent the god's revenge. For those among the dikasts expecting treatment of this aspect, this argumentation was certainly an important reason for conviction. However, the process of persuasion in the (actual) speech does not rely on working this way. On the one hand, Demosthenes does not set out this line of thought or directly accuse Midias as a doer of impious deeds. Formulations are rather cautiously chosen so as not to link Midias immediately with impiety. Demosthenes certainly exploits this potential and in passing raises the idea that impious acts have been committed. Thus he may evoke the idea of Midias deserving punishment for impiety. But where he speaks of ἀσέβεια, he does so in contexts that argue a different point. In this way, he can tax Midias with impiety while not dwelling on the point, most conspicuously in the episode about Alcibiades and where he calls the charge impiety concerning the festival (§§199–200).

On the other hand, the charge of a religious offence is not completely independent, for the second function of the religious elements is to enhance the seriousness of the ὕβρις-charge (and thus to justify its treatment in a public trial).⁶³ If ὕβρις includes the wilful transgression of rules, it is more serious to violate one's proper limits towards the gods than towards fellow human beings. ἀσέβεια is thereby the most serious form of ὕβρις in that the insolence is directed at the highest possible target. Impiety does not constitute an independent charge in this case but a particular form of ὕβρις. This connection is emphasized by the frequent juxtaposition and the equal treatment of gods and men. The third function concerns the integral role of religion in Athenian society. ὕβρις against a deity is mostly combined with one against the civil order. Thus someone who violates the rules of worship violates those of the community at the same time. This goes beyond the mere breach of the law. The cohesive function of religion within Athenian society has the effect that serious non-compliance with the religious rules of the state is a sign of indifference or even hostility towards the state. ἀσέβεια is a demonstration of deviation from civic values and provokes angry reactions from the orderly rest of the people. This function is in conformity with the main strategy of the speech: to expose Midias as not subordinating himself to the rule of the people and thus to press the point that Midias' acts were public offences. In this way the nature of religion as dealing with divine matters is totally irrelevant. The solemnity that surrounds every religious act and notion (cf. §126) might be felt. The argument, however, rests on a merely political basis.

⁶³ Clearly stated in Schol. Dem. 21. 159 τοῦτό τις μὴ νοήσαντες ὅτι αὐξήσεως εἴληπται ἔνεκεν, περὶ ἀσεβείας εἶναι τὴν κρίσιν ἀπεφάναντο.

The Aristarchus Affair and its Exploitation

The problem of convincing the Athenians that Midias' punch had public significance was not the only difficulty Demosthenes was facing. A dubious affair about an alleged lover of his own and his involvement in a murder was exploited so as to cast a negative light on him and damage his reputation. His enemies used the opportunity to blame him personally for the murder: they could denigrate him referring to this story more than twenty years later.⁶⁴

Demosthenes had won the affection of Aristarchus, a young man obviously eager for a career in Athenian public life. He promised to make him a politician and instructed him in oratory.⁶⁵ When Demosthenes was accused of desertion by a certain Nicodemus, Aristarchus probably killed the accuser, and cruelly. The two cases need not have been connected by more than mere coincidence; Demosthenes' rivals, however, declared that Aristarchus had only been Demosthenes' instrument to rid himself of a dangerous enemy. It is not entirely clear when Nicodemus was killed, but a dating after the Euboean expedition in 348 seems likely.⁶⁶ Thus the memory of the scandal around Aristarchus was still fresh. Since opponents could use it against Demosthenes as late as in 323, it is all the more likely that he had to expect such an allegation to be made by Midias in a trial in 347/6. Aristarchus had gone into exile in the meantime in order to avoid condemnation, and this was counted as a confession. It is unclear how much of the allegations of Demosthenes' enemies stuck, but it was probably enough to form effective material for denigration.

So there is no doubt that Demosthenes dwells on this affair in order to prepare for Midias' accusations in his defence speech. Demosthenes' aim in this passage (§§104–22) is, first of all, to depict himself as innocent of the murder. Secondly, in order to emerge as innocent he needs to demonstrate Midias' untrustworthiness. To this end, and as support to his general strategy in the speech, he thirdly denigrates Midias. The denigration works by insinuating a sinister motive in connection with the present trial: Demosthenes describes how Midias made the charges against him and then against Aristarchus in his selfish wish to remove Demosthenes so as to avoid the present trial. He did this in a way that contravened all standards of decency. It will become clear that religious concepts and beliefs help to achieve all three aims. The arguments all draw on the concept of

⁶⁴ Aeschin. 1. 172, 2. 148, Din. 1. 30, 47.

⁶⁵ Cf. Aeschin. 1. 171–2. The best account of the affair is given by MacDowell (1990), 328–30.

⁶⁶ Otherwise Demosthenes would not only confuse the chronology in his narrative; he would also argue in a totally implausible way in §120, where he says 'If I let [Midias] off and betray your vote against him, I'm not guilty of anything, it seems; but if I take proceedings, I'm a deserter from the ranks, I'm an accomplice in homicide, I have to be annihilated.' This sentence does not make sense unless at least the allegations against Demosthenes were brought forward by Midias in the Agora after the incident in the theatre in 348. The words *τοῖς μετὰ ταῦτ(α)* (§108) do not make sense with a different date either. So Dreyer (2000), 61 (assuming that Nicodemus took Demosthenes to court before 352) is certainly wrong.

blood-guilt; however, the ways in which they exploit that concept range from the use of seemingly archaic ideas on pollution to a social approach in which the specifically religious nature is not important. They thus partly work like the *ἀσέβεια* allegations in the rest of the speech – stressing the social level – but partly require the acceptance of the religious features. The religious argumentation comes in two parts, in relation to Midias' charges against Demosthenes himself (§§104–7) and against Aristarchus (§§114–21).

In Athenian society murder was always to a high degree associated with religion: murder trials, for example, were presided over by the *ἄρχων βασιλεύς*, who otherwise dealt with religious affairs.⁶⁷ The trials were not held in a courtroom but in the open-air, and in the time preceding them the defendant was not allowed to enter the marketplace or the sacred precincts of the state. These instances show that even the judicial treatment of homicide was influenced by religious ideas, first of all by the concept of blood-guilt and pollution.⁶⁸ Because of the proximity of this religious concept to any sort of violent death the exploitation of religious ideas suggests itself when one is dealing with a case of homicide. Accordingly, Demosthenes points to this affinity at the start of his account of Midias' behaviour in the course of the Aristarchus affair (§104):

ἀλλ' ὁ καὶ δεινόν, ὧ ἄνδρες Ἀθηναῖοι, καὶσχέλιον καὶ κοινὸν ἔμοιγ' ἀσέβημα, οὐκ ἀδίκημα μόνον, τοῦτω πεπράχθαι δοκεῖ, τοῦτ' ἐρώ.

But the thing done by him which I consider really dreadful, men of Athens, and shocking and of public concern, an act of impiety, not just of injustice, I will tell you.

Demosthenes begins his narrative with Midias publicly denouncing him on the marketplace in connection with the murder of Nicodemus. Midias walks around in the Agora and utters 'impious and dreadful talk' (*ἀσεβεῖς καὶ δεινοὶ λόγοι*) saying that Demosthenes had committed the murder. As he has no success with this kind of talk, he attempts to bribe the kinsmen of Nicodemus into filing an action against Demosthenes as the killer. It is clear from Demosthenes' words that both Midias' denunciation and the attempted bribery are presented as impious.

The first objection, the *ἀσεβεῖς λόγοι*, seems to be quite strong, though vague. I would suggest that there was not really anything seriously impious (in the sense of a religious offence) in Midias' acts; the *ἀσεβεῖς λόγοι* are impious only in so far as they are spoken in a murder issue and have something dodgy about them. They are just not what one thinks correct and decent.⁶⁹ For Midias obviously

⁶⁷ Cf. Arist. *Ath. Pol.* 57 – against e.g. MacDowell (1963), 149 and Herman (2006), 310–11; cf. next note. For the concern about the religious components cf. below, Ch. 4 on Dem. 23.

⁶⁸ Cf. Antiph. 5. 11, Dem. 20. 158, more generally Garner (1987), 35–8; Parker (1983), 117–18 says that retribution may have been the primary idea in some rules, but the Athenians could then associate these rules also with pollution, e.g. the casting out of inanimate objects that had caused a person's death.

⁶⁹ For a parallel cf. Isoc. 12. 203 with a comparable meaning. When the expression occurs in classical, that is pagan texts, these *λόγοι* normally denote a denial of or false statements about the

overrode the procedures for accusations of homicide. In order to institute a suit, it was the next of kin of the victim who had to make a proclamation in the Agora.⁷⁰ By his *λόγοι* Midias might well have aroused enough attention for his utterances to be reminiscent of the official declaration.

Demosthenes exploits the fact that homicide was easily linked with religious awe in order to enhance the significance of a circumstantial incident. He gives Midias' action a label that is as strong as possible but elusive enough to suggest that he did not intend that a very concrete or narrow meaning be attributed to the term *ἀσεβές*.⁷¹ It is left to the audience to see more behind this choice of word than a strong expression of Demosthenes' indignation.

Since Midias did not formally launch the prosecution, nothing happened and he had to undertake the next step, which is still covered by Demosthenes' description as *ἀσέβημα*. Midias turned to those who were supposed to prosecute the murderer: the relatives of Nicodemus, who had apparently already indicted Aristarchus.⁷² He offered them money for an additional accusation against Demosthenes, considering 'neither gods nor divine law (*θεσία*) nor anything else an obstacle' (§104). The irregularity in this case consists in Midias' attempt to induce Nicodemus' kinsmen by dishonest means to misuse their situation. He tried to make them act not according to their duty as kinsmen of the victim but more or less as his henchmen and thus pervert their honourable action of

gods (Pl. *Leg.* 891 d, Schol. Ar. *Pl.* rec. 593a b, Ariston, *SVF* i. 353). This cannot apply to the present passage. *ἀσέβεια* is unlikely to have had a clearly defined scope; interpretation of the term was open to the audience, cf. D. Cohen (1991), 203–17, Parker (2005a), 65.

⁷⁰ *IG* i³. 104. 20–1 and Dem. 43. 57. MacDowell (1963), 24 accepts only this proclamation as legally significant. The proclamation at the tomb is described as 'a religious ceremony'. If so, we have to ask why the exegetes in Dem. 47. 69 say that their advice on this proclamation is not part of their business.

⁷¹ Cf. e.g. Lys. 12. 24 and the introduction on other such terms employed as general abuse. Midias' behaviour may have been felt to be scandalous because he exploited the system for his own ends without consideration of the social norms. MacDowell (1990), 331 thinks the accusation of an innocent person is *ἀσεβής* because of the danger that the city might execute him and thereby causes its own pollution. The idea is not one that occurs at first sight. In Antiphon's *Tetralogies* the speaker has to spell out why he thinks the prosecutor is impious (Antiph. 2. 2. 11, 4. 2. 7; in Pl. *Ep.* 7. 325 b the charge against Socrates is *ἀνοσιωτάτη* only because it is Socrates who is accused of impiety – and again the reason has to be explained). Demosthenes, by contrast, says nothing like this. So even though I should not like to rule out that a part of the audience would have so understood this short remark, it is by no means inherent in Demosthenes' words: denunciation of murder was, it seems, not normally viewed as impiety. To call someone a killer (*ἀνδροφόνος*) was forbidden by law, but so was the allegation that someone had 'cast away his shield' (Lys. 10. 6–9); cf. Wallace (1994), 123: the freedom of speech 'was restricted only when the *political* interests of the city were at stake' (my italics). Later on, Demosthenes himself calls Midias' accusation of Aristarchus in the *βουλή* impious only in connection with his oaths and visits to Aristarchus (§120, below, p. 46; cf. also Dem. 47. 70).

⁷² Demosthenes opens §104 by saying that Midias committed impiety *κακῆς καὶ χαλεπῆς συμβάσης αἰτίας Ἀριστάρχω τῷ Μόσχου*. The aorist probably indicates that Aristarchus had been accused before the events Demosthenes describes. The expression *τοῖς ἐπ' ἐκείνον ἄγουσι τὴν αἰτίαν τοῦ φόνου* cannot mean 'those who should later . . .', but rather, in the durative aspect, 'those who were accusing' or 'those who are accusing'; the latter does not make good sense about an exiled person.

avenging their family member.⁷³ By attempting to bribe Nicodemus' relatives he showed that there was no basis for his accusations, that he could not make them feel it part of their obligation to prosecute Demosthenes, but that an action against him would rather be a conspiracy exploiting their extraordinary authority. The only evidence Demosthenes gives of the unrighteousness of Midias' deed is the law against bribery. He does not explain what is so impious in this intrigue against him or why the gods should be concerned about this matter. Therefore, we have to understand ἀσέβημα in a wider sense: it is used by Demosthenes in order to suggest an element in Midias' behaviour that is somehow felt to contravene piety.⁷⁴ But actually, the point is only that Midias acts against the norms in a matter that is strongly connected with the field of religion. His 'indecent' behaviour and his undermining the legal regulations take place in a realm where one had to be careful to comply with all the religious and legal demands. The bribery, which is said to be in disregard of the gods and divine right, is only an attempt to undermine the legal system, which might then lead to an unjust accusation. Demosthenes thus makes a fuss about behaviour that may seem irregular and offensive, but not criminal or particularly irreverent towards sacred rules. He depicts Midias' dirty tricks as interfering with a sphere of solemnity and awe so that they appear more outrageous by the breach of divine law that is hinted at.⁷⁵

What applies to Midias' first action holds true also for his next steps: they are not typical cases of ἀσέβεια and Demosthenes never spells out what exactly is impious in them. The purpose of the denunciation was to drive Demosthenes out of Athens into exile, not to kill him.⁷⁶ Demosthenes even describes how, had Midias succeeded, he would have been debarred from burial in Attica (§106). He further tries to persuade the dikasts that Midias subordinated every moral idea to the condemnation and removal of his rival (§105). Demosthenes combines the demonstration of total neglect of norms for selfish reasons with reference to the very highest, the religious, norms. For this reason he speaks of Midias' not making the gods or divine right an obstacle. In this way the portrayal of Midias' lack of any positive quality and his ὕβρις can be presented all the more effectively: his crime is even greater, if he not only tries to destroy a citizen in order to avoid giving an account of his offences, but if in doing so he transgresses divine right.

⁷³ It seems that it was possible not to take action against murderers for a sum of money. But this too could be used as an argument against one's character, cf. Harp. s.v. Ὑποφόνια, Dem. 58. 28–9.

⁷⁴ The areas commonly covered by ἀσέβεια (considering that ἀσέβημα and ἀσέβεια are more or less the same, stressing the act or the status respectively) are violation of the gods, the ἱερά, one's country, the dead, or one's own family. Cf. Rudhardt (1992), 16.

⁷⁵ The noun δόσια occurs nowhere else in Attic prose but is very much a poetic word (and used twice in Herodotus). The one instance in Aristophanes (*Pl.* 682) can be interpreted as paratragic (ῥημιζεν in the preceding line is attributed a paratragic function by Rau 1967, 167).

⁷⁶ It is doubtful whether he wants to say that by causing his execution Midias would involve Athens in blood-guilt, because he mentions only exile. He uses the word ἀνελεῖν, which can mean 'kill', but takes up the word in the expression ἐξόριστον ἀνηγήσθαι immediately afterwards. So the potential notion of impious killing is dissolved after a second.

Thus Demosthenes' point in using religious terminology is not so much the denigration of Midias as impious. That, again, might suffice and work for a part of the audience.

The entire section neither particularly emphasizes nor explains the impiousness of Midias' actions. Demosthenes rather depicts his opponent as someone who would do anything to his advantage and is in total disregard of any statute, however 'sacred' it is. After this part of the affair has been dealt with Demosthenes asks about the prosecution of desertion and homicide (§109):

τὴν ὑπερβολὴν ἀναιδείας καὶ ὁμότητος καὶ ὕβρεως, ἄνθρωπος εἰ ποιήσας δεινὰ νῆ Δία καὶ πολλὰ ἀδίκως τινά, ἀντὶ τοῦ ταῦτ' ἀναλαμβάνειν καὶ μεταγινώσκειν, ἔτι πολλῶ δεινότερα ὕστερον ἄλλα προσεξεργάζοιτο;

What shamelessness, cruelty, and insolence could one say go beyond this: if a person who did wrong to another quite terribly and repeatedly, instead of offering atonement and regret, were to go on to commit yet other much worse crimes in addition?

This makes clear that Demosthenes has so far not been concerned with the specifically religious aspects of the *ἀσέβημα* but with the offender transgressing ever more serious norms. Religious points serve as amplification, though in a way that subordinates this aspect to a more general characterization: Midias acts in an impious way, but this is only part of his character. Demosthenes' general focus is on the cause that makes him act like this and that manifests itself in the resulting *ἀσεβήματα*.

Thus in the first section on the affair Demosthenes highlights the scandalousness of Midias' manoeuvres. This corresponds very much with what we have seen for the use of religion with regard to the punch in the theatre. It becomes clear how Midias is driven ever further by his desire to accomplish his aims and to come out on top. In this instance he needs to have Demosthenes convicted; having failed to get rid of him by the accusation of desertion for which he pays Euctemon, Midias goes as far as to commit acts which Demosthenes can brand as *ἀσέβεια*.

During the middle section (§§108–13) the religious element virtually disappears, only to reappear in §114 after the law on bribery has been read. But this time both its character and its purpose have changed completely. The blood-guilt topic becomes clearly discernible in the terminology used and the ideas expressed. Midias is called 'impious and polluted' (*ἀσεβὴς καὶ μιαρὸς*), not caring about whether what he says and does is right or wrong to friend or foe. There follows an explanation set directly in the sacred sphere: Midias, although he accused Demosthenes of homicide, did not prevent him from sacrificing on behalf of the state during Demosthenes' term as councillor (§§114–15):

οὕτω τοίνυν οὗτός ἐστιν ἀσεβὴς καὶ μιαρὸς καὶ πᾶν ἂν ὑποστάς εἰπεῖν καὶ πράξαι, εἰ δ' ἀληθὲς ἢ ψεῦδος ἢ πρὸς ἐχθρὸν ἢ φίλον ἢ τὰ τοιαῦτα, ἀλλ' οὐδ' ὅτι οὖν διορίζων, ὥστ'

ἐπαιτιασάμενός με φόνου καὶ τοιοῦτο πρᾶγμα ἐπαγαγών, εἶασε μὲν με εἰσιτητήρια ὑπὲρ τῆς βουλῆς ἱεροποιῆσαι καὶ θύσαι καὶ κατάρξασθαι τῶν ἱερῶν ὑπὲρ ὕμῶν καὶ ὅλης τῆς πόλεως, εἶασε δ' ἀρχεθεωροῦντα ἀγαγεῖν τῷ Διὶ τῷ Νεμείῳ τὴν κοινὴν ὑπὲρ τῆς πόλεως θεωρίαν, περιείδε δὲ ταῖς σεμναῖς θεαῖς ἱεροποιὸν αἰρεθέντ' ἐξ Ἀθηναίων ἀπάντων τρίτον αὐτὸν καὶ καταρξάμενον τῶν ἱερῶν. ἀρ' ἄν, εἰ γ' εἶχε στιγμὴν ἢ σκιὰν τούτων ὧν κατεσκεύαζεν κατ' ἐμοῦ, ταῦτ' ἂν εἶασεν;

This man, then, is such an impious and defiled person, so ready to say and do anything, not distinguishing in the slightest whether it is true or false, or is done to an enemy or a friend, or any question of that sort, that, after accusing me of homicide and bringing such a charge against me, he allowed me to hold inaugural rites on behalf of the council and to sacrifice and to initiate the rites for you and the whole city; he allowed me, as *arche theoros*, to lead the city's festival representatives for Zeus of Nemea; he stood by when I was elected from the whole of Athens as one of three *hieropoioi* for the Solemn Goddesses and initiated the rites. If he had had a scrap or a shadow of evidence for the charges he got up against me, would he have allowed that?

If, so Demosthenes' unspoken rationale, he had really participated in the murder of Nicodemus, he would have been impure and therefore not allowed to sacrifice.⁷⁷ So for the sake of the city Midias would have had to hinder Demosthenes from sacrificing. More than that, if he had had evidence of Demosthenes' guilt, he would not have let the opportunity to accuse Demosthenes pass by.⁷⁸ In any case, it is the requirement of ritual purity that is exploited, but there are, again, two possible interpretations: on the one hand, Midias had the chance of embarrassing Demosthenes in public by making his allegations in a highly official context, before the officials of the city and the crowd; on the other hand, he was obliged to halt the ritual because of a religious obstacle consisting in the defilement of the sacrifice, if it was performed by a killer.⁷⁹ Demosthenes does not make clear which case he wants to be seen as the right one but leaves it to the audience to decide. The line of thought behind the passage is that Midias did not intervene, so he did not have a shadow of evidence against Demosthenes; therefore, all his previous accusations had arisen from *ὑβρις*. He is not reliable in anything he says and will say about the Aristarchus affair in his defence speech.

Demosthenes highlights the preposterousness of Midias' behaviour and the crudeness of his accusations, which he cannot substantiate. It is not decisive whether the audience regard the rituals as a real touchstone of Demosthenes' innocence. They may just as well consider it to be a good opportunity to compromise Demosthenes which Midias would not have missed. The view they

⁷⁷ Instigation is as much a crime and followed by pollution as the actual deed, Andoc. 1. 94, Aeschin. 1. 172, cf. MacDowell (1963), 131–3, Parker (1983), 114. Both as instigator and as the actual murderer he would have had to stay outside the sanctuaries completely, cf. MacDowell (1963), 23–5.

⁷⁸ A similar argument is put forth by Eubulides in Dem. 57. 47–81, cf. Ch. 9.

⁷⁹ It is possible to say that through his presence (not to speak of his performing them) he would have prevented the success of a sacrifice: cf. the spells in Versnel (1985) and the following.

took may have varied depending on the individual dikast's propensity to believe in the threat to the sacrifice and the assessment of Midias' unscrupulous inactivity.⁸⁰

The episode is also significant in that Demosthenes says something about himself which is rare enough in religious contexts. One can read the enumeration of sacrifices performed by him (§§114–15) both as a proof of his innocence and as hidden self-praise demonstrating his piety.⁸¹ The gods have accepted the offerings and by doing so they have shown that Demosthenes has not been involved in the murder of Nicodemus. Even the Eumenides, the avengers of homicide and thus the first who would have haunted Demosthenes, have accepted what Demosthenes offered them.⁸² So it must be clear to everyone who adheres to traditional religion that Demosthenes cannot be polluted.

However, Demosthenes chooses not to state this thought explicitly. The idea was, however, still current in Athens at that time. Aeschines spells it out when he quotes the amphictyonic oath and later repeats the formula (Aeschin. 3. 121):

μήποθ' ὁσίως, φησί, θύσειαν οἱ μὴ τιμωροῦντες τῷ Ἀπόλλωνι μηδὲ τῇ Ἀρτέμιδι μηδὲ τῇ Λητοῖ μὴδ' Ἀθηνᾷ Προνοίᾳ, μηδὲ δέξαιντο αὐτῶν τὰ ἱερά.⁸³

[The curse] says: 'And may those who do not take action [i.e. who violate the oath] never offer pure sacrifice to Apollo, Artemis, Leto or Athena Pronoia, and may the gods not accept their offer.'

A fragment of Euripides shows that an allusion would suffice to suggest the idea (*TrGF* 852):

ὅστις δὲ τοὺς φύσαντας μὴ τιμᾶν θέλῃ,
μὴ μοι γένοιτο μήτε συνθύτης θεοῖς
μήτ' ἐν θαλάσῃ κοινόπλουν στέλλοι σκάφος.

Whoever refuses to honour his parents, may he never sacrifice with me to the gods and never set out to sail the sea aboard the same ship as I.

So the idea is familiar to the Athenians. They would have understood that someone who is cursed cannot sacrifice successfully. Nor was this type of argumentation alien to the courts.⁸⁴ Demosthenes, however, leaves such an

⁸⁰ Carawan (1993), 254 suggests that the conventions of the courtroom forbade speaking about purity. As we shall see (Chs. 4 and 5), this is not entirely correct, even though orators were extremely cautious not to mention dangers to the city.

⁸¹ The scholion (Dem. 21. 405b) remarks: 'In fact he makes the gods witnesses of his having committed no such crime. For how could the Zeus of the council, the Zeus of Nemea, have accepted the sacrifice, if Demosthenes were such a man?'

⁸² Cf. Schol. Dem. 21. 407.

⁸³ Also Aeschin. 3. 111, cf. above, n. 79. I have kept the reading *Προνοία* of the manuscripts (instead of *Προναία* as preferred by Dils and others) because of Dem. 25. 34.

⁸⁴ The defendant in Antiphon's speech *On the Murder of Herodes* (5. 82–3) points out that he is clearly not guilty of murder since the sacrifice succeeded. He seems to need to emphasize the meaning of a failure in sacrifices. The weight of this argument is further stressed by the presentation of witnesses for the sacrifices and the juxtaposition with the more common idea that he did not suffer shipwreck, cf. Lys. 6. 19, Andoc. 1. 139, and several times in tragedy, e.g. Eur. *El.* 1355; in the 4th c. cf. Xen. *Cyr.* 8. 1. 25.

interpretation to the audience by highlighting only Midias' inconsistency. He thus avoids relying on the idea of blood-guilt, while still exploiting it as something people would in principle accept. It is unclear whether everyone in the audience would be willing to attribute the force of a proof to such an 'ordeal'. In the way he argues, Demosthenes offers something to both groups: those who disregard religious elements in their own decisions could see Midias' inconsistency in missing out on a chance to denounce Demosthenes; the believers could, in addition, be persuaded by the successful sacrifice.

Midias has thus been demonstrated to be a liar and someone who is prepared to transgress all statutes and conventions. Demosthenes, by contrast, has 'proven' his innocence regarding Nicodemus' death. He has already achieved all three goals mentioned at the start of this section as essential for the *praeoccupatio* against prospective allegations by Midias: he has refuted the allegation that he was involved in the murder; he has cast doubts on Midias' credibility; and he has even blackened his image. In the third step of his description of the homicide affair, Demosthenes goes further and finally presents Midias as indeed a violator of divine right and as ignorant of the basic rules of social contacts – just as he had done in connection with the punch –, again highlighting the inconsistency in his behaviour.

Nicodemus' relatives apparently refused to accept the bribe and to prosecute Demosthenes. So Midias had to look for a different way to harm his enemy, and he did this by accusing the (probable) actual murderer, a partisan and friend of Demosthenes. We do not know why the council was concerned with the case of Aristarchus.⁸⁵ It might just have been the scandalous nature and the political background of the event that led to a discussion. Anyway, in the course of this debate Midias called for Aristarchus' execution. The fact that Midias was presumably not a member of the *βουλή*, but asked for permission to speak on this occasion,⁸⁶ gives his intervention an even higher significance: he makes an effort to deliver his indirect attack on Demosthenes. This time Demosthenes does not blame Midias for making allegations that were impious as such.

The climax in the aggressive tone of the entire speech is the description of Midias as 'this defiled, shameless head' (*μιαρὰ καὶ ἀναΐδης αὕτη κεφαλὴ*). The reason is that his treatment of Aristarchus fuses the acceptable behaviour towards friends and enemies.⁸⁷ For Midias' declaration in the *βουλή* is depicted as a breach of the rules of friendship (§§117–18):

⁸⁵ To our knowledge, they did not have any competence in the prosecution of homicide, cf. Rhodes (1972), 179–80.

⁸⁶ MacDowell (1990), 339. It was possible to ask this permission, cf. Rhodes (1972), 42–3.

⁸⁷ Demosthenes avoids saying explicitly that the two were *φίλοι*. However, he speaks of *φιλία*. This term has a wider scope than being *φίλοι* (in Aristotle: Konstan 1997, 68) or at least a different one, cf. Pizzolato (1993), 31, Hansen (1991), 283. Demosthenes also describes acts that suggest deep familiarity: Midias enters Aristarchus' house and sits next to him, though accepting someone into one's house is a sign of intimacy appropriate only for friends, cf. D. Cohen (1991), 84. He also wants to use Aristarchus as an intermediary in a reconciliation with Demosthenes. Acting as an arbitrator before going to court is, again, apparently one of the core duties of *φίλοι* (e.g. Lys. 4, 2, Dem. 30, 2), cf. Konstan (1997), 87–8.

εἰ μὲν οὖν εἰργάσθαι τι τούτων ἐφ' οἷς ἀπόλωλεν ἡγούμενος τὸν Ἀρίσταρχον καὶ πεπιστευκῶς τοῖς τῶν αἰτιασαμένων λόγοις ταῦτ' ἔλεγεν, χρῆν μὲν οὐδ' οὕτω μετρία γὰρ δίκη παρὰ τῶν φίλων ἐστίν, ἂν τι δοκῶσι πεπονηκέναι δεινόν, μηκέτι τοῦ λοιποῦ φιλίας κοινωνεῖν, τὸ δὲ τιμωρεῖσθαι καὶ ἐπεξίεναι τοῖς πεπονθόσι καὶ τοῖς ἐχθροῖς παραλείπεται.

Now, if he said this because he considered that Aristarchus had committed any of the deeds which brought about his downfall, and because he believed the accusers' statements, even so he should not have acted in this way. Friends who are thought to have done something dreadful are punished moderately, by having the friendship broken off; revenge and legal proceedings are left to their victims and enemies.

But still Demosthenes does not depict this infidelity as a religious offence; he simply points out the inappropriateness of Midias' behaviour towards Aristarchus.⁸⁸ The religious note comes in when he shows that Midias acted inconsistently by not giving up his 'friendship' formally while doing things to Aristarchus that rule out the existence of proper friendship. After his denunciation he does not break the tie, but visits again the man he has just accused of homicide (§§118–19):

εἰ δὲ λαλῶν μὲν καὶ ὁμωρόφιός γιγνόμενος ὥς οὐδὲν εἰργασμένῳ φανήσεται, λέγων δὲ καὶ κατατινύμενος ταῦθ' ἔνεκα τοῦ συκοφαντεῖν ἐμέ, πῶς οὐ δεκάκις, μᾶλλον δὲ μυριάκις δίκαιός ἐστ' ἀπολωλέναι; ἀλλὰ μὴν ὥς ἀληθῆ λέγω καὶ τῇ μὲν προτεραίᾳ ὅτε ταῦτ' ἔλεγεν, εἰσεληλύθει καὶ διείλεκτο ἐκείνῳ, τῇ δ' ὕστεραίᾳ πάλιν (τοῦτο γάρ, τοῦτο οὐκ ἔχον ἐστὶν ὑπερβολὴν ἀκαθαρσίας, ἄνδρες Ἀθηναῖοι) εἰσελθὼν οἴκαδε ὥς ἐκείνον καὶ ἐφεξῆς οὕτως αἰκατεζόμενος, τὴν δεξιὰν ἐμβαλὼν, παρόντων πολλῶν, μετὰ τοὺς ἐν τῇ βουλῇ τούτους λόγους, ἐν οἷς αὐτόχειρα καὶ τὰ δεινότατ' εἰρήκει τὸν Ἀρίσταρχον, ὥμνυε μὲν κατ' ἐξωλείας μηδὲν εἰρηκέναι κατ' αὐτοῦ φλαυρόν, καὶ οὐδὲν ἐφρόντιζεν ἐπιορκῶν, καὶ ταῦτα παρόντων τῶν συνεδόντων, ἡξίου δὲ καὶ πρὸς ἐμὲ αὐτῷ δι' ἐκείνου γίνεσθαι τὰς διαλύσεις, τούτων τοὺς παρόντας ὑμῖν καλῶ μάρτυρας.

But if it is shown that he chatted under the same roof with him as if he were an innocent man, and then made these statements and accusations for the purpose of incriminating me, surely he deserves death ten times over, or rather ten thousand times! To show that I am telling the truth and that on the day before he made these statements he had gone in and conversed with Aristarchus, and on the day after once again (now this is really the supreme example of impurity, men of Athens) he entered his house, sat next to him, as close as this, gave him his hand, and in the presence of a large number of people, after that speech in the council in which he had called Aristarchus 'the perpetrator' and the most dreadful things, he swore, invoking destruction on himself, that he had made no allegation against him, and he did not care that he was perjuring himself, and doing so in the presence of people who were aware of that, but even asked Aristarchus to be the intermediary for a settlement between himself and me. I shall call those who were present to testify this to you.

⁸⁸ The failure to help a friend is treated as a proof of 'viciousness of character' (Mitchell and Rhodes 1996, 14) in several speeches, not as a religious offence. The only passage known to me where conduct towards friends is connected to *εὐσέβεια* is Gorgias VS 82 B 6.

The principle of the argumentation is the same as with Demosthenes' sacrifices: if he had believed what he had told the council, he would knowingly and willingly have polluted himself by going under the same roof (*ὁμωρόφιος*) as the killer and entering his house.⁸⁹ This is more than just a description of keeping up friendship: it is the language of pollution. Demosthenes stresses this fact by calling it the 'utmost impurity' (*οὐκ ἔχων ὑπερβολὴν ἀκαθαρσίας*, §119).⁹⁰ However, the impurity need not be more than a new inconsistency of behaviour: if Aristarchus was not guilty, Midias has lied to the *βουλή* and made a malicious declaration, but he has not been polluted by his visit to the innocent man's house.⁹¹ The offence is the same as that of the 'impious talk' of the first passage.

With the next step of his narrative, however, Midias finally becomes inadvertently guilty of a religious offence. After his address to the *βουλή* Midias swore to Aristarchus and invoked destruction on himself, insisting that he had not said anything disparaging against him. Demosthenes again emphasizes the incongruity of Midias' acts, slipping in the term 'impious' (§120):

καίτοι πῶς οὐ δεινόν, ὦ ἄνδρες Ἀθηναῖοι, μᾶλλον δὲ ἀσεβές, λέγειν ὡς φονεύς, καὶ πάλιν ὡς οὐκ εἴρηκεν ταῦτα ἀπομνύναι, καὶ φόνον μὲν ὀνειδίζειν, τούτῳ δ' ὁμωρόφιον γίγνεσθαι;

Is it not a terrible thing, men of Athens, or rather impious, to call a man a murderer and then again to deny on oath having said that, to accuse a man of homicide and then to go under the same roof with him?

The word *ἀσεβές* is used of the combination of aggressive but irreconcilable actions. The term is more easily applicable than usual because the affair is one with associations with matters of purity and pollution. However, Demosthenes rather plays with these concepts, leaving it open whether Midias is stained in the ritual sense. It is the contradictoriness in what Midias does that is highlighted, not the perjury as such or the visit to a killer (since the murder is not finally admitted). The description of Midias' behaviour suggests that what he says is not to be trusted because his words contrast with his deeds. That all this is shown in relation to religious concepts is not essential to the purpose of the demonstration, but additional enhancement of the significance of the matter. If the register of language adds to the impression of Midias' outrageousness and to the indignation of the audience, that makes things easier for Demosthenes; if some of the *dikasts*

⁸⁹ Because of the word *χρῆν* in the main clause, it is unclear whether this is a hypothetical condition or a real one, cf. K. G. i. 204. Pace Konstan (1997), 89, Demosthenes nowhere actually speaks of Aristarchus' innocence as a matter of fact.

⁹⁰ The word *ὁμωρόφιος* is used in a similar context by Antiph. 5. 11 and in Dem. 18. 287. The same idea is expressed quite frequently, e.g. Eur. *Andr.* 657–9, *LSS* 115 A 16–20; in prayers Versnel (1981), 21. According to Demosthenes, Midias himself called Aristarchus *αὐτόχειρ*, a word that can be associated with pollution: e.g. Pl. *Leg.* 865 B, Soph. *OT* 231; earlier in this speech, it occurs in the context of impious acts in the theatre (§60).

⁹¹ Konstan (1997), 88 'Demosthenes' point is that Meidias has betrayed a friend for the sake of his vendetta against him.'

even believe that Midias is polluted and therefore a danger to the Athenians, it is all the better. Demosthenes, however, does not emphasize this idea in such a way as to make it indispensable for a condemnation of Midias.

At the end, Demosthenes reveals the defensive nature of the whole passage (§120): 'If I let him off and betray your vote against him, I am not guilty of anything, it seems; but if I take proceedings, I am a deserter from the ranks, I am an accomplice in homicide, I have to be annihilated!' He makes it finally clear that in the centre of his argumentation stands the attack on Midias' credibility. Midias would not have taken action, if Demosthenes had dropped the case against him; since Demosthenes did not do so, Midias has incriminated him by forging ever new accusations and playing ever new tricks. Demosthenes takes the concept of blood-guilt for granted and obviously expects his audience to recognize it from casual remarks and allusions. However, the acceptance of the relevance (or probative force) of the idea of pollution is not a prerequisite for the argument to work. Since he does not make the underlying concept explicit other than in terms that can be read as mere abuse, his primary concern is not to show that Midias is polluted. As he demonstrated Midias' outrageousness in the first part of the speech regarding the festival, he again shows that Midias' conduct does not know any limits of decency: he does not shun using any means in order to destroy his prosecutor, even bringing pollution on himself; in this undertaking he is indifferent to all values and unconcerned about the consistency of his doings. In this way the passage further bolsters up the overall argument of the speech and fits in the general strategy. At the same time, as an immediate purpose, it serves as defence against Midias' attacks: Demosthenes tries to explain all the accusations against himself as machinations that do not deserve to be taken into account in the verdict. For most of the passage *ἀσέβημα* is hardly more than an expression for outrageousness and unacceptable behaviour; Demosthenes merely exploits the vagueness and wide range of the term. He does not make *ἀσέβεια* and its consequences the core of his arguments.

The exploitation of the concept of blood-guilt is prompted by Midias' prospective attacks. Demosthenes takes up the allegations he expects to be made by his opponent. So only when defending himself against allegations of pollution does he resort to direct and vicious attacks in religious categories. The assault on his character is not just anticipated, but thrown back, turned into an attack on Midias' own ruthlessness. Midias is denied the qualification to bring forward allegations of defilement against Demosthenes (which were probably a serious threat to him) because he himself is tainted in the way he says his opponent is. Demosthenes, however, does not warn his audience to keep away from his opponent, as would be the consequence of true pollution, but not to be taken in by him; he tells them to tame him and his like. Midias' alleged impiety and pollution are rather a code for ignorance or dismissal of the rules of the community and of the limits of credibility than a religious category.

Conclusion

The speech as a whole, it seems, plays up the religious significance of both the incidents in the theatre and Midias' actions in connection with the murder of Nicodemus. However, Demosthenes does not use the religious aspects to make the case one with a primarily or specifically religious charge. Instead, by making the offences bigger than they are, Demosthenes prepares the ground for presenting them as a public affair and particularly outrageous, analogous to Midias' character. Religion is thus a means of amplification or intensification of his portrayal of Midias. The violation of sacred right in the theatre is essentially only one aspect and a by-product of Midias' hubristic behaviour: Demosthenes does not explain the consequences and warn the Athenians against leaving Midias in their midst. Apart from the pathos-laden last sentence of the speech, the request to execute or exile Midias is not made with a view to castigating a transgression of religious norms. Invective in religious terms is weak as regards the festival; it is much more forceful only when Demosthenes' own qualification is under debate. But even here, Demosthenes highlights the civic components. Midias' disrespect for the venerable rules regarding homicide proves first and foremost his own unscrupulousness and Demosthenes' innocence. Here too Demosthenes emphasizes that Midias is not just a threat to him, but that his taming is in the public interest.

Demosthenes' arguments would probably not be enough to convict Midias of *ἀσέβεια*. Only in the part on the murder of Aristarchus, which is not directly related to the charge but serves as anticipated defence, does the religious nature of the relevant arguments predominate. However, even in this section it is not absolutely essential to believe in, or judge depending on, the religious content: exploiting Midias' inconsistency and violation of the norms, the arguments can be convincing even if one does not share the underlying beliefs.

2

On the False Embassy (Or. 19)

WE do not know for sure what was the outcome of the prosecution of Midias. Even if Demosthenes did not fight the matter through and did not go to court, it apparently did not do much harm to Demosthenes' political career. He established himself as a prominent politician and when the Athenians negotiated with Philip, he spoke in favour of peace. Around the time peace was sealed in 346 he was sent on two embassies to the Macedonian king: the first mission to Philip was supposed to discuss peace, the second was to administer the oaths to Philip. After this second embassy, which took far longer than envisaged to meet Philip and execute its business, Demosthenes accused some of his fellow ambassadors at the account rendering (*εὔθυναι*) of collaboration with the king.¹ From about this time onward he returned to the position of a fierce enemy of the Macedonians, as he had been at the start of the 340s. He thus stood in opposition to Eubulus, the dominating figure of Athenian politics of the time and a strong promoter of a passive foreign policy. Among Eubulus' supporters besides Midias was Aeschines, quite possibly also Philocrates,² two members of the embassies and advocates of peace.

As the Athenians' attitude toward the peace treaty changed, its main advocates were prosecuted. Hyperides accused Philocrates, who had been the chief proponent of what is now even referred to as the 'Peace of Philocrates' and fled Athens so as to avoid the trial. In 343, three years after the event, Aeschines too had to stand trial for wrongly conducting an embassy to Philip. The core of the charges for which Demosthenes and his ally Timarchus (and at least one other unknown person) had indicted him shortly after the return of the embassy was bribery. Connected with this were allegations of reporting falsely to the assembly, not giving beneficial advice to the Athenians, not following the assembly's mandate, and wasting time (§8). It is not entirely clear why so much time passed before the trial took place; Demosthenes blames Aeschines (§258), but that is not necessarily the whole truth. Partly responsible for the delay was the trial against Timarchus, a manoeuvre by Aeschines intended to weaken the prosecution team in his own case. The charge against Timarchus makes it clear that the accusations

¹ On the impact of the charge cf. Roberts (1982), 49–54, on the general historical background MacDowell (2000), 1–22 provides a good and concise synopsis.

² There is no hard evidence to make this link, though a connection is likely, cf. Engels (1989), 73 with n. 125. On Eubulus' policies cf. Cawkwell (1963).

against him were not motivated by real interest in the punishment of the 'offence' but based on tactical consideration: Timarchus lost his citizen rights because he had prostituted himself in his youth and wasted an inheritance – an offence committed long ago and not considered relevant before.

Demosthenes too had brought forward his accusations against Aeschines for tactical and political reasons rather than because Aeschines' guilt was certain; we hear next to nothing of credible proofs for his allegations. After the backlash from the banishment of Timarchus he might rather have been waiting for a time when the political climate was auspicious for a conviction of Aeschines to carry through the procedure he had initiated. When the Athenians became more and more disillusioned with the peace, Demosthenes might have found the time right for reopening the case. In consequence, he blames Aeschines for the deterioration of the city's situation.

The lack of clear evidence may account for Demosthenes' use of a particular form of rhetoric. By a seemingly unstructured and repetitive presentation of events, he enables himself to conceal the fact that he hardly proves anything. He mentions the same points again and again and can thus insinuate that something he has only mentioned before has actually been proven as fact. Certain points are repeated so often that parts of the audience are persuaded by the mere frequency of the same allegation.³ The 'fact' that is most insistently hammered home is that Aeschines has been bribed.⁴ Another such point is the depiction of the defendant as a traitor. The argument develops in pairs of opposites,⁵ and in one of them Demosthenes, the servant of Athens, is contrasted with Aeschines the man who sold his fatherland. Throughout the speech Aeschines is presented as someone who is negligent about Athenian interests, disobeys the orders of the Athenian assembly, and acts in a way an Athenian would not. A general trait of Demosthenes' characterization of Aeschines is that he depicts his opponent as an outsider acting at the edge of or even outside society. Aeschines places himself in this position, not from any force or compulsion but of his own accord.

The aim of this chapter is to demonstrate that the religious references contribute largely to the definition of Aeschines' place at the margin of society. Demosthenes does not exploit the fact that '[a]ny action which could be called unpatriotic could be regarded . . . as impious.'⁶ He could argue that Aeschines, being a defiled offender, has to be removed from the community he threatens and that his impiety might provoke the gods' wrath; instead, denigration in religious terms underpins the points on social cohesion made in the speech, but does not

³ Harris (1995), 117. More generally on this type of rhetorical psychology cf. Paulsen (1999), 483–4, 523–4. We hear that, in the end, Aeschines was acquitted all the same, though not by a comfortable margin (30 votes according to Idomeneus *FGrH* 338 F 10, unless the unlikely story that the battle of Chaeroneia intervened is true, cf. Plut. *Dem.* 15. 5, *Mor.* 840 c).

⁴ Cf. the list in Paulsen (1999), 482.

⁵ Frazier (1994), 416–17, Paulsen (1999), 485.

⁶ Dover (1974), 250.

form an independent accusation. Religious activity or a specific ritual status is thus indicative of his (lack of) affiliation with Athens.

The only instances in which religious misdemeanour is associated with danger are in connection with the dikasts and the heliastic oath. The exploitation of this motif goes beyond the usual scale. The reason for the moral pressure that is exerted on the dikasts remains unclear, but it might have to do with the authority of the political line-up Demosthenes is fighting against.

Religious Manifestations of Aeschines' Treason

To see the context of the religious denigration it is necessary first to see how the strategy of describing Aeschines as an outsider works in general. A few examples will show Aeschines as an enemy of Athens undeserving to share citizen rights and be part of the community. After that, a similar technique will be shown in the case of religious arguments.

The political climate of 343 was one in which war against the Macedonians seemed unavoidable and Philip could no longer be described as an ally.⁷ So being on friendly terms with him seemed (in retrospect) identical with working to the utmost detriment of Athens; anything else was treason. By preferring to be loyal to the Macedonians instead of the Athenians Aeschines had violated his duties as an envoy (§110):

γέγονεν καλὸς καὶ ἀγαθὸς καὶ δίκαιος μισθωτὸς ἐκείνῳ, πρεσβευτῆς μέντοι καὶ πολίτης ὑμῖν προδότης καὶ τρίς, οὐχ ἅπαξ, ἀπολωλέναι δίκαιος.

As Philip's hireling, he has been excellent and just; for you, however, as envoy and fellow citizen, he turned traitor and deserves to die not once, but three times over.

Aeschines' perversion is shown by the ironical application of the civic virtue of excellence (*καλοκαγαθία*) to a hireling of the king. In a similarly ironic twist Demosthenes juxtaposes the words 'envoy', 'citizen', and 'traitor', highlighting the paradox of Aeschines' standing.⁸ The consequence of this situation and Aeschines' conduct must be death, the ultimate removal from the community he has betrayed.⁹

The contact with Philip subverts social ties within Athens. Aeschines refuses friendship (one of the essential forms of personal interaction in Athens) with 'the city' and prefers having the bonds of hospitality and friendship with Philip (§248):¹⁰

⁷ Sealey (1993), 170–5.

⁸ Cf. Paulsen (1999), 149.

⁹ This removal is illustrated by the fact that traitors were not allowed to be buried within Attica, Xen. *Hell.* 1. 7. 22, cf. MacDowell (1978), 176–9. For some hint at the social significance of such 'exclusion' cf. Patterson (2002), 99–100.

¹⁰ Cf. §295 οἱ νομίζοντες αὐτοὺς ἀξιώχρεως εἶναι τοῦ Φιλίππου ξένοι καὶ φίλοι προσαγορεύεσθαι; there they are said to strive for being greater than the masses – an oligarchic tendency as exploited in *Against Midias*. On conflicts between *ξενία* and obligations to one's city cf. Herman (1987), 1–6. On friendship cf. Strauss (1986), 21 ('the cement of public as well as private life'), Konstan (1997), 55. The evaluation of the term varies: compare e.g. Dem. 18. 284 with 54. 35.

ἀντὶ μὲν τῆς πόλεως τὴν Φιλίππου ξενίαν καὶ φιλίαν πολλῶ μείζονα ἡγήσατο αὐτῷ καὶ λυσιτελεστέραν . . .

Rather than the city, he considered the hospitality and friendship of Philip far more important and profitable to himself . . .

That means he rids himself of the mutual obligations of the civic community; not even the menace to Athens from the destruction of Phocis matters to him.¹¹ At the same time, the contact with Philip disrupts the web of friendship within the city and divides Athens; a former friend no longer dare greet Demosthenes on the street, but converses only with Aeschines and other traitors. Philip, as if omnipresent and omniscient, even dominates over social ties (§§225–6).

The betrayal of the city, however, goes further. Aeschines has not only sold his compatriots; he even uprooted the moral foundation of the city by urging it to abandon its traditions and thus the cornerstone of its ideology. For he appealed to the Athenians not to remember the heroes of Marathon and Salamis in their decisions.¹² In this way he tried to deprive them of one of their greatest honours: the praise of their ancestors' deeds. This was something not even an enemy would have done (§§311–12). Demosthenes, however, does not content himself with the audience finding this behaviour outrageous, but adds that it deserves the loss of citizen rights (§313). At this point he states most explicitly that Aeschines should be separated from the citizen body and that he does not belong to the group that is represented by the dikasts:

εἴθ' οὕς μὴδὲ τῶν ἐχθρῶν μὴδεὶς ἂν τούτων τῶν ἐγκωμίων καὶ τῶν ἐπαίνων ἀποστερήσειεν, τούτων Αἰσχίνης ὑμᾶς οὐκ ἔα μεμνήσθαι, τοὺς ἐξ ἐκείνων, ἵν' αὐτὸς ἀργύριον λάβῃ; καὶ μὴν τῶν μὲν ἄλλων ἀγαθῶν οὐ μέτεστι τοῖς τεθνεῶν, οἳ δ' ἐπὶ τοῖς καλῶς πραχθεῖσιν ἔπαινοι τῶν οὕτω τετελευτηκότων ἴδιον κτήμᾳ εἰσὶν οὐδὲ γὰρ ὁ φθόνος αὐτοῖς ἔτι τηνικαυτ' ἐναντιοῦται. ὦν ἀποστερῶν ἐκείνους οὗτος, αὐτὸς ἂν τῆς ἐπιτιμίας δικαίως νῦν στερηθείη, καὶ ταύτην ὑπὲρ τῶν προγόνων ὑμεῖς δίκην λάβοιτε παρ' αὐτοῦ.

So is it possible that, while no one, not even any of your enemies, would deprive those men of their praises and acclamations, Aeschines does not allow you, their descendants, to remember them, just so that he can make some money? Indeed, though the dead are excluded from every other good thing, the glory that stems from noble deeds is the personal privilege of those who have died in this way. For they no longer even meet with envy. If this man deprives those ancestors of their glory, it would be right for him now to be deprived of his rights as a citizen and for you to inflict that punishment on him on behalf of your ancestors.

¹¹ The contrast is with Creon's first speech from Sophocles' *Antigone* (ll. 162–210, Demosthenes has the clerk quote ll. 175–90). There the new king sets out a radically 'patriotic' government: he would never make friends with an enemy of the country and thus endanger the 'ship of state'. By contrast, Aeschines did not care how the ship would stay upright, and ended up capsizing and sinking it (§250). The audience are obviously not expected to remember the whole plot of the *Antigone*; we have to take Sophocles' words in their isolated position (*pace* Perlman 1964, 172).

¹² He has mentioned this statement before (§16); it was a reply to (probably) Aristophanes' pro-war speech, cf. Aeschin. 2. 74–5 and Theopompus *FGrH* 115 F 166 with Efsthathiou (2004), 399–400.

The contrast between Aeschines and the dikasts, the true Athenians with full citizen rights (*ἐπίτιμοι*), is marked again by calling the latter the descendants of the fighters of Marathon and Salamis.

These are just a few examples of how Demosthenes exploits Aeschines' alleged actions against Athenian interest. He transforms Aeschines' acceptance of bribes into a demonstration of his disruptive influence on Athens and his self-imposed separation from the Athenian community: thus Aeschines not only accepted bribes but also damages Athens in other ways.¹³ Two further ways in which Aeschines harms the city are his contravention of the orders of the assembly and the subversion of the duties and the proper conduct expected from a good citizen.¹⁴

In the following I shall demonstrate how the references to religious institutions and acts work similarly. Their function is to support the argument that Aeschines is at the margin of Athenian community rather than give the impression of him as an impious villain.

Significant in this respect is the treatment of the main action of the second embassy, the acceptance of oaths. Demosthenes recounts how the ambassadors delayed the start of their mission and stayed in Pella while Philip was making conquests in Thrace. The responsibility for this inactivity is Aeschines'; he resisted Demosthenes' attempts to urge his fellow ambassadors to take action: the envoys stayed completely idle for three months and did not even administer the allies' oath. Instead, the latter finally took the oaths in an inn (§158):¹⁵

τρεις μῆνας ὅλους ἀποδημήσαντες καὶ χιλίας λαβόντες δραχμὰς ἐφῶδιον παρ' ὑμῶν, παρ' οὐδεμιᾶς πόλεως, οὐθ' ὅτε ἐκείσε ἐπορεύοντο οὐθ' ὅτ' ἐκείθεν δεῦρο, τοὺς ὄρκους ἔλαβον, ἀλλ' ἐν τῷ πανδοκείῳ τῷ πρὸ τοῦ Διοσκουρείου... ἐνταῦθ' ἐγίγνωθ' οἱ ὄρκοι, ὅτε δεῦρ' ἤδη τὸ στράτευμ' ἄγων ἐβάδιζεν Φίλιππος, αἰσχροῦς, ἄνδρες Ἀθηναῖοι, καὶ ἀναξίως ὑμῶν.

Although they were abroad for three whole months and spent a thousand drachmae of your money on expenses, they did not receive the oaths from a single city, either on their way there or on their way back, but the oaths were administered in the inn by the temple of the Dioscuri... when Philip was already on his way here at the head of his army. It was a disgrace, men of Athens, and not worthy of you.

Demosthenes complains about the form and the circumstances of the religious ceremony.¹⁶ The focus is, however, not on inaccuracy or insufficiency in terms of the ritual requirements. There is no reason why the gods as the authority

¹³ An orator had to suggest that the particular case of bribery was against the interest of the state. Otherwise it was hard for him to present it as something condemnable, cf. Harvey (1985), 108, 10.

¹⁴ For the contravention of orders cf. e.g. the delay of the second embassy and their failure to administer oaths from the cities allied with Philip in time (cf. below): §§6, 157, 161, 278. The duties and rules of proper conduct are violated e.g. in the maltreatment of the Olynthian captive at the banquet at Xenophon's (§196 8) note the contrast with the preceding description of Demosthenes' care for the prisoners-of-war (§168 73).

¹⁵ The fact that the oath had already been taken by Philip himself (Dem. 18. 32) is passed over.

¹⁶ Schol. Dem. 19. 338 ἐν βεβήλῳ τόπῳ καὶ φαύλῳ.

monitoring the oaths should not have been assumed to be content with any surrounding. So, if Demosthenes mentions the temple of the Dioscuri (§158), that does not mean that the procedure would have had to take place there in order to be valid. It is only the symbolic value and the political significance that are highlighted, and with it the indifference or perfidy of the ambassadors (and Aeschines in particular) who allowed it to happen in this undignified way.

The procedure of oath-taking did not break any regulations of the peace treaty or the assembly's decree¹⁷ nor did it lack the sacredness that would guarantee adherence to the statutes of the peace. If the oaths were not taken at the sort of place one would expect, such as amidst the army or in a sacred place,¹⁸ this somehow expresses contempt for the content of what is sworn. The solemnity conferred on an oath when sworn in a sacred precinct, at an altar, etc. does not make it more binding, but it does express more clearly the awareness of its importance.¹⁹ Calling the circumstances of the procedure disgraceful and not worthy of Athens, Demosthenes suggests that Aeschines and his companions shamed Athens when they let this happen.

Demosthenes gives the impression that the ceremony was rushed. Philip just stopped on his way to Phocis and had the oaths sworn by some representatives of his allies, not by their highest officials. By doing so he was able to prevent the Athenians from going to the assemblies of the single cities. This allowed the allies to join the campaigns against Thrace (for they swore the oaths only on their way back) and against Phocis, which was included in the peace – all this according to Demosthenes (§§158–9, 278). The words 'disgrace' and 'not worthy', however, add an extra proof of the ambassadors' treachery. These permitted the violation of the dignity of their own country by devaluing the ceremony. This piece of misbehaviour lends additional credibility to the interpretation of the delay as a sign of bribery and thus reinforces the conclusions drawn from that delay.²⁰ But also in itself it constitutes evidence of the ambassadors' non-Athenian or even anti-Athenian way of dealing with their mandate.

The next instance in which Aeschines is linked with an interference in the sphere of religion is after the seizure of Phocis. When this event is reported to Athens panic erupts, and the assembly decrees the evacuation of the countryside and the armament of the Athenian borders, as if Athens herself were endangered.²¹ One of the measures laid down in the decrees of Diophantus and

¹⁷ This has been shown by Mosley (1972), 147 and thenceforth accepted.

¹⁸ Schol. Dem. 19. 338 (probably Menander); cf. the Athenians swearing in the assembly. Mosley (1972), 147 expresses doubts that Demosthenes' version of the location (in, not in front of the inn, i.e. between the inn and the temple) is correct and would be believed by every dikast.

¹⁹ Dover (1974), 257.

²⁰ Cf. Schol. Dem. 19. 338.

²¹ The assembly took place in the Piraeus (§125), but it is not certain whether this can be counted as a sign for an extraordinary session. The only other assembly in the Piraeus of which we hear in the 4th c. (§209) shows nothing comparable. Paulsen (1999), 161 notes that assemblies outside the Pnyx are a regular feature of that time.

Callisthenes (as part of the evacuation) is the relocation of the festival of Heracleia from the countryside to the city.²² When Demosthenes talks about these incidents for the first time (§86) he finishes with the remark:

ὁ καὶ θαυμάζω, εἰ τὸν μηδὲ τοὺς θεοὺς, καθ' ὃ πάτριον ἦν, τιμᾶσθαι ποιήσαντα, τοῦτον ἀτιμώρητον ἀφήσετε.

I wonder whether you will release unpunished the man who brought it about that not even the gods were honoured in the customary way.

One might be reminded of the explanation that *εὐσέβεια* means to sacrifice in the same manner as one's ancestors, to perform 'the customary rites' (*τὰ νομιζόμενα* or *τὰ πάτρια*).²³ A dikast who was tending to fear that the gods' reaction to the reduced celebration might be anger with Athens might blame Aeschines for causing impiety.²⁴ However, the change in the festival is not regarded in isolation; the damage Aeschines does to (the worship of) the gods is the same as that to men: just as women and children have to leave their living area and the men have to take their posts in the military, so the normal course of community life is disturbed. However, disruption of the festival constitutes still more serious insolence: 'not even' the affairs of the gods are as they should be. That means the gods should be affected last, but Aeschines' acts shook Athens so profoundly that even in this last field things could not go on as they used to. As in *Against Midias*, affecting the realm of the gods is an indicator of the seriousness of an offence rather than a new quality of offensiveness.²⁵

²² The differences of Demosthenes' formulations in §§86 and 125 are so small that one may suppose that Demosthenes cites the text of the decrees from memory. At the first passage he might just have left out the clause on the fortifications. There has been no agreement on which festival was moved: the Heracleia at Diomeia were held near the city walls, apparently a little more than one month after the assembly, as Deubner (1966), 226 infers from the calendar frieze of Hagios Eleutherios; cf. Parker (2005b), 472 3. For MacDowell (2000), 244 5 this period of time fits the decree; in Deubner's opinion (227) the interval is apparently too long.

²³ e.g. Lys. 30. 19, Draco at Porph. *Abst.* 4. 22; abundant evidence for these phrases can be found in Mikalson (1983), 137 nn. 22 3 and 138 n. 29. The breach of traditions and non-conformance in festivals could be a serious offence worthy of immediate punishment or at least of being noticed and mocked: whoever makes *τὸ πάτριον* change becomes an outsider; for non-conformance at festivals, cf. below on Epicrates and Ar. *Ran.* 1037 8. *LSCG* 13. 27 30 orders trials for serious breaches of rules of the minor festival of Hephaesteaia; for similar prescriptions cf. *LSCG* 36.

²⁴ Cf. above, p. 50 (with n. 6). The historical evidence suggests that changes to religious customs in times of immediate danger were allowed. Even the Spartans, normally over-anxious to stick to customs and to perform their festivals properly (Popp 1957, 83 4, 91, 103 4), made exceptions; cf. Thuc. 5. 82. 3 (possibly also 3. 3. 5), Xen. *Hell.* 6. 4. 16, Goodman and Holladay (1986), 160. Habicht (2006) lists further examples of cancelled festivals, and also a few instances of people accused of missing or preventing proper ceremonies (153 4 with n. 6). So Demosthenes' words could be understood in this way, though the context causes a shift in the significance of the sentence quoted above to the less specific.

²⁵ From Harpocration (s.v. *Ἡράκλεια*) onward the Heracleia in question have been supposed to denote either the Diomeia or the festival in Marathon for the very reason that these were the most popular. It is, however, possible that Demosthenes only evokes the impression that it was one of these major festivals in order to make the disturbance seem even greater. On the large number of Heracleia cf. Harp. (ibid.), Woodford (1971).

The changes to the festival mainly signal the degree of turbulence. They indicate the deep crisis, the feeling of panic and the danger Athens was in at the time. In the context of the reference to the Heracleia in this passage Demosthenes speaks about the deterioration of Athens' military position (§§83–7). He gives a sketch of how the strength of the city has been diminished by the loss of Thermopylae to Philip, who gained control over this access to Central Greece after the surrender of Phocis and the Peace of Philocrates. With this goes the loss of hope of keeping the Thebans in check. Aeschines, Demosthenes says, made the Athenians reveal their hostility towards Thebes by his tactics in the assembly. This again led to closer ties between that city and Philip and rising pressure on Athens. Demosthenes compares the earlier times, when Athens earned sacrifices and praise, with recent events. In this context the change of venue of the Heracleia indicates the negative development Aeschines is made responsible for. The transfer of women and children from the countryside and the celebration of the Heracleia within the city walls signal the danger of a surprise attack.²⁶ The contrast between this menace and the sacrifices of thanksgiving is used as an illustration of how weak Athens has become; if the Athenians are forced to abandon the conventions of how to celebrate the Heracleia (while officially at peace), it is a sign of the reduced political power of Athens, which Aeschines' subversive behaviour has allegedly caused. Thus the extent of panic and disruption is the focus of this passage.²⁷

Demosthenes insists that Aeschines wilfully caused the departure from the norms which the ancestors are said to have set up and which were used to enforce a moral standard upon the Athenians.²⁸ He thereby excludes the change to tradition from being excused by the military situation: ultimately, Aeschines is responsible because without him the enemy would not have threatened Athenian territory. In this way, Demosthenes can attribute the blame to his opponent and treat the moving of the festival as a scandal, at the same time avoiding any reproach to the Athenians. As to the religious issues of holding the Heracleia in accordance with ancestral customs, however, he keeps all but silent. The buzzword is all we get.

Demosthenes refers to the event a second time (§§125–6). The passage is more straightforward and has a different gist. He emphasizes Aeschines' travel to Philip during the turmoil in Athens after the news of the capture of Phocis had spread. In the midst of the panic in his home city Aeschines sets off to the person responsible for the uproar. The focus of that passage is on Aeschines' attitude of total neglect and almost *Schadenfreude* towards the end of Phocis and towards the fate of Athens. Demosthenes demonstrates that Aeschines has abandoned one of

²⁶ On festivals as an ideal time for surprise attacks cf. Popp (1957), 125, Parker (1983), 155–6.

²⁷ In the corresponding passage (2. 139), Aeschines suppresses any mention of the panic and even the Heracleia.

²⁸ Dover (1974), 107–8; on Demosthenes' presentation of the ancestors as normative cf. Jost (1936), 226–31, 245–6.

the foundations of Athenian society, namely common concern for the protection of the city. Instead, his relationship to Philip seems so strong that he does not even care about the death penalty imposed on people who acted as if on an embassy without official commission.²⁹ If the Heracleia are moved, this is just an indication of how disconcerted the Athenians are and how serious the menace is felt to be – a feeling Aeschines does not share.

Aeschines himself confirms that he was not in Athens, while all this was happening (2. 139). He explains his absence by his concern with a new mission. The Athenians had decided to extend the peace treaty to Philip's descendants. But before the new envoys appointed to inform Philip about it could carry out their mission, they learnt of the surrender of Phocis and returned to Athens. The assembly, however, re-elected them to go to Philip. While Demosthenes took the oath of exemption both times, Aeschines first excused himself for illness but later declared he had recovered and joined the fourth mission. By referring to his engagement he stresses his participation in public affairs and the Athenians' faith in him (2. 94). Demosthenes' version of Aeschines' dealings on that mission, however, reads quite differently. Demosthenes insinuates that his oath of exemption was not an honest oath (§§122–4):

ἐτι γὰρ τῶν πραγμάτων ὄντων μετεώρων καὶ τοῦ μέλλοντος ἀδήλου, σύλλογοι καὶ λόγοι παντοδαποὶ κατὰ τὴν ἀγορὰν ἐγίνοντο τότε ἐφοβοῦντο δὴ μὴ σύγκλητος ἐκκλησία γένοιτο ἐξαίφνης, εἴτα ἀκούσαντες ὑμεῖς ἐμοῦ τάληθ' ἡ ψήφισαισθ' ἐτι τῶν δεόντων ὑπὲρ τῶν Φωκέων, καὶ τὰ πράγματα ἐκφύγοι τὸν Φίλιππον. . . . διὰ δὴ ταῦτα πάντα, ἵνα μηδὲν μεταθῇσθε ὧν ἐξηπάτησθε, τοῦτον αὐτοῦ κατέλιπον. ἐξομόσασθαι μὲν δὴ μὴ μετ' αἰτίας τινὸς δεῖν ἦν καὶ ὑποψία μεγάλη "τί λέγεις; ἐπὶ τηλικαῦτα καὶ τοιαῦτ' ἀγαθὰ οὐχὶ βαδίζεις ἀπαγγέλλας οὐδὲ πρεσβεύεις;" ἔδει δὲ μένειν.

With things still up in the air and the future unclear, all kinds of views were being expressed by people gathering in the Agora. The envoys feared that a special meeting of the assembly might suddenly be called, and then, if you heard the truth from me, you might make the right decision about the Phocians, and Philip might lose his grip on the situation. . . . For all these reasons, then, they left this man in Athens to prevent you from changing any of the decisions that you were deceived into making. Now, for him to swear exemption without any excuse was risky and would arouse considerable suspicion: 'What do you mean? You are not leaving and will not be an envoy after you assured us of so many wonderful benefits?' But he had to stay.

Demosthenes claims that Aeschines' motives for taking the oath and not going on the embassy were against Athenian interests. Later, when the news about Phocis has spread and the embassy is about to set off again, Aeschines 'reveals' that he was not really ill by going on the new embassy (§126), pretending that he had recovered. Demosthenes insinuates that the reason for taking the oath of exemption was false. But Aeschines' false oath is nothing more than a sign of his

²⁹ Cf. MacDowell (2000), 257.

malice and his political rivalry against Demosthenes, as he uses exemption at will for his political, that is anti-Athenian, goals. Taking the oath without a proper reason is called a serious and very suspicious matter, but Demosthenes avoids associating it with perjury.³⁰

The actual high treason, however, was committed during the mission to Philip. In Thebes the Macedonians and their allies held a victory celebration (*ἐπινίκια*). Demosthenes' first accusation in that context is that Aeschines attended the party. Demosthenes interprets this as treason in so far as the Phocians were the Athenians' allies. Aeschines celebrated their defeat with the (present) enemy. He extends the allegations to taking an active part in the celebration. This included joining in the paeon and Philip's prayers (§128):

ἀπάντων γὰρ ὑμῶν τουτωνὶ καὶ τῶν ἄλλων Ἀθηναίων οὕτω δεινὰ καὶ σχέτλια ἡγουμένων τοὺς ταλαιπώρους πάσχειν Φωκέας ὥστε μήτε τοὺς ἐκ τῆς βουλῆς θεωροὺς μήτε τοὺς θεσμοθέτας εἰς τὰ Πύθια πέμψαι, ἀλλ' ἀποστήναι τῆς πατρίου θεωρίας, οὗτος εἰς τὰ πινίκια τῶν πραγμάτων καὶ τοῦ πολέμου, ἃ Θηβαῖοι καὶ Φίλιππος ἔθνον, εἰστιάτο ἐλθὼν καὶ σπονδῶν μετείχε καὶ εὐχῶν, ἃς ἐπὶ τοῖς τῶν συμμάχων τῶν ὑμετέρων τείχεσι καὶ χώρᾳ καὶ ὅπλοις ἀπολωλόσιν ἠὔχετο ἐκείνους, καὶ συνεστεφανοῦτο καὶ συνεπαιώνειζεν Φιλίππῳ καὶ φιλοτησίας προὔπινεν.

All of you here and all other Athenians were so horrified and so outraged at what was happening to the poor Phocians that you kept both the council's delegates and the thesmothetes from travelling to the Pythia, and you dropped the traditional delegation entirely. Yet this man travelled to the Thebans and Philip, who were sacrificing in celebration of their political and military victories. He feasted and shared in the libations and prayers Philip offered to mark the destruction of your allies' walls, territory and forces; and he joined Philip in wearing a crown and singing paeans; and he drank to Philip's health.

There is no basic disagreement about these facts between the opponents. Aeschines concedes that he took part in the celebration and might have sung the paeon. He says, however, that he together with about 200 other ambassadors was called to *ξένια*, which would be a neutral invitation, rather than a victory celebration.

In principle, it seems that Demosthenes' interpretation of the happening as *ἐπινίκια* is correct. There are instances from the fourth century at which the *ἐπινίκια* took place some time after the actual victory.³¹ We know very little about what happened at such a celebration, but the paeon and thank offerings

³⁰ We may well wonder whether this is not exaggerated: a lot to do might be a common excuse. In Theophr. *Char.* 24. 5 it is a sign of haughtiness, but the behaviour as such does not seem absolutely unacceptable; in Ar. *Ecl.* 1026 it is obvious that the old ugly woman regards the young man's *ἐξωμοσία* as a mere trick to avoid intercourse with her. Therefore, a 'legitimate excuse' (Hansen 1991, 234) was not required; Demosthenes does not give us his either.

³¹ Such celebrations are better attested for the day of the victory itself, cf. the list in Pritchett (1971 91), iii. 187 9. The examples for a different time (and place) are Polyaeus, *Strat.* 6. 13 (Jason of Pherae) and Diod. Sic. 16. 55. 1 (Philip).

were certainly regular features. It is only the habit of singing the paean at normal symposia that enables Aeschines to re-interpret the gathering as an insignificant feast for the ambassadors at Thebes.³² There is, moreover, no reason why the Athenian envoys should not have taken part in the victory celebrations: for the city was allied with Philip, peace had been made, and the original purpose of the third embassy had been to convey the contents of the latest decree drafted by Philocrates. This document praised Philip and said that the Athenians would support the fight against the Phocians (§§48–9).³³ After the fall of Phocis the embassy departed again, went to the meeting of the Delphic amphictyony, and afterwards apparently joined the celebration at Thebes. Finally, the Athenians had approved of Philip's cause and by a decree named the Phocians the guilty party. To a degree, they had also taken part in the negotiations about the future of Phocis. Thus they were members of the winning party and entitled to join the *ἐπινίκια*. So, why do Demosthenes and Aeschines not just say that?

Aeschines tries to avoid admitting that it was a victory celebration, and for this the reason may lie in the political climate. Since at the time of the trial the Athenians regretted having allowed Philip to increase his power in the Sacred War, it would have cost Aeschines much sympathy to admit that he had publicly expressed his joy at it.³⁴ He would, at the same time, have shown support for the decree moved by the scapegoat Philocrates, from whom both Demosthenes and Aeschines try to dissociate themselves. Instead, he plays it down as a communal festivity for all embassies to Philip.

Demosthenes, by contrast, would not have been able to use the celebration to show Aeschines' hostility towards Athens, if he had conceded that Aeschines was more or less on a public mission on behalf of the city. So transforming the feast into something detrimental to Athens was vital for Demosthenes' argument to work: the main effect the episode has in Demosthenes' speech is to present Aeschines as someone who not only betrayed Athens, but joined a different community. Demosthenes singles out Aeschines since it is not convenient for him to admit that the other ambassadors were at the feast as well (§129). So they are only mentioned casually and not described as active, although they possibly serve as witnesses against Aeschines now.³⁵ Moreover, Demosthenes can almost triumphantly point to his own absence, just as if his oath of exemption and his refusal to go on the embassy had been patriotic acts.

³² For the paean's *Sitz im Leben*, in particular after victories (cf. Xen. *Cyr.* 4. 1. 6 and, above all, Schol. Aesch. *Sept.* 635) and at symposia, cf. Käppel (1992), 303–4, 317–22. Neither he nor Pritchett (1971–91) includes our passages of Demosthenes and Aeschines in his catalogue of *ἐπινίκια* and paeans.

³³ Cf. Efstathiou (2004), 391–2 for the treaty's regulations regarding Phocis.

³⁴ Already in the same year, the assembly had grown so angry that they did not send a delegation to the Pythian Games (§128), and Demosthenes had to take pains to convince them not to start a war (Dem. 5).

³⁵ It is unclear if Demosthenes had many witnesses for the *ἐπινίκια*, but it is likely that some ambassadors in addition to Aeschines attended, cf. Aeschin. 2. 162.

Demosthenes indirectly accuses Aeschines of disobedience against Athenian decrees by contrasting his attendance at the celebration with the absence of Athenian magistrates from the Pythia.³⁶ He also stresses the significance of participation in the ceremony (§128). Its religious character is clearly and repeatedly confirmed by terms like 'sacrifice', 'libations', and 'prayers', not in any way unusual for ἐπινίκια.³⁷ However, that character is mentioned only as setting and the form in which the individual acts of treason took place; religion is not discussed or specifically emphasized as such. The particular emphasis of the passage is not on the danger that the gods could answer Aeschines' and Philip's shared prayers. Instead, the performative side of the ritual, the fact that Aeschines discloses his affiliation with Philip by siding with the enemy, is the outrageous element in Aeschines' actions. Demosthenes describes Aeschines as joining in the enemy's cult community.³⁸

That Aeschines' sharing the rites with Philip and the Thebans was meaningful to the Athenians is confirmed by their own political actions: the Athenians later refuse to take part in the Pythia directed by Philip. In Demosthenes' propaganda this keeping away from 'Philip's' games is more than a political statement: it is the dissociation from the illegitimate intruder, the barbarian usurping Hellenic rites.³⁹ When Aeschines replies to the allegations, he claims that it was not only unobjectionable to join in the celebration (as it was a religious rite), but that it would not have been εὐσεβές to exclude himself from it. He also accuses Demosthenes of prosecuting the man with whom he has made libations and with whom he has dined.⁴⁰ This turning back of the charge shows that the question of integration and (self-)exclusion from a community is the issue at stake, and that the shared sacrifices and meals are typical expressions of one's affiliation to a group.

Demosthenes, however, amplifies Aeschines' involvement in the ceremony. Not only does he insinuate that Aeschines had a leading role (his fellow ambassadors being merely bystanders); the prayers that are spoken as part of the

³⁶ Of course, this comparison is misleading: participation at the Pythian Games was cancelled after the ambassadors had returned and reported to the δῆμος about the decisions of the amphictyons. It is doubtful if, at the time of the feast, the Athenians knew at all what had happened since the fall of Phocis. It is not even certain whether the ἐπινίκια took place before or after the meeting of the amphictyony, cf. MacDowell (2000), 13; Diodorus Siculus does not mention them in his historical narrative.

³⁷ Polyaeus *Strat.* 6. 1. 3, 7. 43, Arr. *Anab.* 5. 20. 1; ἐπινίκια are interpreted as a form of (purely religious) χαριστήρια by Rudhardt (1992), 266. The celebration of victory probably belongs to a very old religious tradition, cf. Pritchett (1971 91), ii. 249 (the trophy in honour of Athena, Hom. *Il.* 10. 460 4).

³⁸ Shared ritual, on the πόλις level as well as in interstate relations, have been shown to serve a pivotal function in creating a bond, shaping a community and in the 'expression and reinforcement of community values.' Murray (1990b), 5, Lissarague and Schmitt Pantel (1988), 212 14, cf. also Xen. *Hell.* 2. 4. 20.

³⁹ Dem. 9. 31 2, cf. Ch. 6. From the scholia we learn that the Athenians normally sent θέωροι and θεσμοθέται to the Pythia in order to enhance the honour of the sacrifices (Schol. Dem. 19. 277). This too shows the common interest in the flourishing of games performed by a pan-Hellenic community rather than a number of separate political units; cf. also Cartledge (1985), 99.

⁴⁰ ὁμόσπονδος and σύσσιτος Aeschin. 2. 163, cf. Schmitt Pantel (1992), 169 70.

ceremony are a thanksgiving for the destruction of walls, land, and weapons of Athens' old allies (§128). Again, this statement is factually wrong: the Athenians had decided to help in such actions in the event the Phocians did not give way; it is only from the *ex post* point of view that Demosthenes can presume that Aeschines' acts were hostile to Athens. Similarly, the toasts to Philip are an emphasis of the fresh relationship between Athens and the king, rather than evidence for treason.⁴¹ However, in Demosthenes' interpretation commensality with Philip becomes a conspiracy against the city and in his prayers Aeschines leaves the Athenian community by turning against his fatherland.

If we put it in a wider context, we could even say – taking up the relations of piety and patriotism – that Aeschines abandons the gods of Athens and chooses those of Philip and Thebes. Demosthenes does not draw this conclusion, but after he has the testimonies and a decree read he refers to the prayers in more detail (§130):

τίνας οὖν εὐχὰς ὑπολαμβάνειτ' εὔχεσθαι τοῖς θεοῖς τὸν Φίλιππον, ὅτ' ἔσπενδεν, ἢ τοὺς Θηβαίους; ἀρ' οὐ κράτος πολέμου καὶ νίκην αὐτοῖς καὶ τοῖς συμμάχοις δίδόναι, καὶ τάναντία τοῖς τῶν Φωκέων; οὐκοῦν ταῦτα συννήχετο οὗτος καὶ κατηράτο τῇ πατρίδι, ἃ νῦν εἰς κεφαλὴν ὑμᾶς αὐτῷ δεῖ τρέψαι.

What prayers do you suppose Philip and the Thebans offered when they poured their libations? Was it not that they and their allies be given a mighty victory in war and just the opposite for the Phocians' allies? Did not this man offer this prayer and lay this curse on his country? It is now your duty to turn this curse on his head.

Although the sacrifices were in the first instance a thank-offering for the recent victory, Demosthenes is certainly right in supposing that the prayers dealt with the future, as well. If one does not take them as a vain ritual, Demosthenes' description suggests that Aeschines tried to win the gods over to the enemy's side and turn them against Athens.⁴² His treason would thus reach the highest level: he not only acts against Athens' well-being, but he undertakes to alienate the gods from the city. However, this is an idea Demosthenes does not even allude to at this stage. Nor is Aeschines accused of any misdemeanour against the gods themselves or any religious institution. All one can definitely say is that Aeschines (according to Demosthenes) showed his hostile attitude towards Athens in a ritual context and damaged the city by religious means. The rest is left to the associations made by the individual dikasts.

Besides, how do these prayers affect the Athenians, who had alliances with both parties? Aeschines rightly retorts that these prayers, like the whole ritual, did Athens no harm whatsoever (2. 163). His replies are largely sensible, although he apparently does not dare say that by that time (and partly due to his

⁴¹ Olson (2002), 314: it was conventional to praise the person next to oneself at such toasts. Aeschines insists that Demosthenes did not produce witnesses (Aeschin. 2. 162), which could be either an awkward red herring or an indication of dramatic exaggeration on Demosthenes' part.

⁴² See the *ἐπιθειασμός* in Thuc. 2. 74. 2, Xen. Cyr. 3. 3. 21. The mere hypothesis that the gods could stop favouring Athens, however, is almost unthinkable, cf. Chs. 3 and 6.

commitment) they were in a real alliance with Philip. The need for him to justify his attendance at and participation in the ceremony, however, indicates that the audience accepted Demosthenes' version:⁴³ by supporting Philip and the Athenian arch-enemy Thebes⁴⁴ and by entering on commensality with them he reveals his real affiliation, which is not with his home town but with its fiercest enemies. So he has to assure the dikasts that he did not act in favour of Philip.

The most effective element in Demosthenes' narrative, it seems, was the singing of the paean. When Demosthenes refers back to this passage in a summary at the end of the speech, he only mentions this element of the celebration, and Aeschines, too, concentrates on the singing, not on prayers or sacrifices.⁴⁵ This emphasis might seem astonishing since the paean strikes a positive note: the victory overshadows the suffering of the opponent.⁴⁶ One might assume that the bonds with Philip and Thebes might have been felt to be a stronger offence against Athens than the alleged prayers against the city. They are, however, no offence against gods, but only political acts. So it is the political/civic aspect of religion Demosthenes relies on to bias the dikasts against Aeschines, not religion as such. Aeschines acts impeccably as regards ritual regulations, but has indicated that he has left the community of the Athenians.

In this instance Demosthenes has presented Aeschines as joining the city's enemy. When he makes the usual insults against his opponent's origin and early years, Demosthenes refers three times to his mother initiating other people, partly mentioning the help of Aeschines himself. The gist of these references is that Aeschines' mother (and Aeschines himself) were involved in cult practice inappropriate for Athenians and even officially disallowed. They too mark Aeschines as an outsider to society, as a member of the lowest social stratum despised by the Athenians.

In contrast to the detailed scene we shall see in *On the Crown*, we get only basic information. It is, however, not the aim of this chapter to find what Aeschines' mother Glaucotea really did (that is probably impossible). Instead, we have to look at Demosthenes' presentation of her activity.

⁴³ This is the reason why Aeschines' reply, although it is formally correct, seems feeble to MacDowell (2000), 13.

⁴⁴ Cf. Schol. Dem. 19. 278 *Θηβαίους προσθεῖς τῷ Φιλίππῳ δεδήλωκε διὰ τῶν ἐχθρῶν, ὅτι δεινὰ καὶ ὁ Φίλιππος κατὰ τῆς πόλεως ἤρχετο.*

⁴⁵ §338, Aeschin. 2. 162 3 (cf. also Dem. 18. 287); Aeschines leaves it open whether he has really joined the paean, but we may take the fact that he does not strongly deny it as a sort of confession. If MacDowell's theory (2000, 26) is right and Demosthenes' speech is the unrevised version written before the trial, Demosthenes must have anticipated that this was the most effective allegation in the context of the victory celebration. Note also the verb *προκαλυνδέομαι*, which makes Aeschines seem to kowtow before a barbarian king.

⁴⁶ The paean in general has been most recently interpreted as a chant that expresses the solidarity of the singers (Rutherford 2001, 85–6). According to this interpretation it is the social context that counts. Pindar's *Second Paean*, which may be such a post-battle song, indicates that the solidarity is a positive one, not one that defines itself in the unity against an enemy (esp. l. 66–7). Käppel's interpretation of the paean as a song of healing and escape from danger (1992, 63–4) strikes the same tone.

The first mention of Aeschines' involvement in the cult is made in the description of Aeschines' early 'career' (§§199–200):

καὶ τοιαῦτα συνειδὼς αὐτῷ πεπραγμένα ὁ ἀκάθαρτος οὗτος τολμήσει βλέπειν εἰς ὑμᾶς, καὶ τὸν βεβιωμένον αὐτῷ βίον αὐτίκα δὴ μάλ' ἐρεῖ λαμπρᾷ τῇ φωνῇ ἐφ' οἷς ἔγωγε ἀποπνίγομαι. οὐκ ἴσασιν οὗτοι τὸ μὲν ἐξ ἀρχῆς τὰς βίβλους ἀναγινώσκοντά σε τῇ μητρὶ τελούσῃ, καὶ παῖδα ὄντα ἐν θιάσοις καὶ μεθύουσιν ἀνθρώποις καλινδούμενον; μετὰ ταῦτα δὲ ταῖς ἀρχαῖς ὑπογραμματεύοντα καὶ δυοῖν ἢ τριῶν δραχμῶν πονηρὸν ὄντα; τὰ τελευταῖα δ' ἔναγχος ἐν χορηγίοις ἀλλοτρίοις ἐπὶ τῷ τριταγωνιστεῖν ἀγαπητῶς παρατρεφόμενον;

This impure creature knows full well what he has done, yet he will dare to look you in the face, and in a moment he will be using his glorious voice to talk of the life he has led. It makes me choke. Do these dikasts know that you started off as reading books in your mother's initiation rites, and as a child you hung around with the *thiasoi* of drunken revellers? And that you later served as a sub clerk to civic magistrates and could be bribed for two or three drachmae? And finally, that you just recently found happiness as a freeloader, playing the third parts in productions financed by others?

Demosthenes goes on to report Aeschines' jobs as secretary and actor. The passage has a very loose, seemingly associative connection to the preceding and following episode (the maltreatment of the Olynthian woman at Xenophron's dinner party and general objections against Aeschines' unjust deeds).⁴⁷ The cohesive factor is the slander against Aeschines' whole abject life and his insolence. Accordingly, the impression we get from Demosthenes' short derogatory comment is negative, but the slander is comparatively restrained. Initiating others is not as such disgraceful. Only the context reveals that the remark is meant to express that in Aeschines' case this activity is intended by Demosthenes to appear despicable. Private mysteries, even if they were not officially acknowledged, need not have been out of the ordinary in Athenian life.⁴⁸ The boy reading from the sacred books is also a feature known from other sources. It may point to a marginal state, but need not be meant as an insult by itself:⁴⁹ the motif of Aeschines' loud and clear voice is the point of transition to his career and the

⁴⁷ The word *ἀκάθαρτος* (impure creature) might refer back to the abuse *κάθαρμα* (offscourings) in the preceding paragraph (in the context of the abuse of the Olynthian woman). *ἀκαθαρσία* (impurity) seems to be a medical term initially, but it has also become associated with ritual purity, cf. Parker (1983), 214. Comedy, however, knows a non-religious use as mere slander: e.g. Baton PCG 5.

⁴⁸ Both *θίασοι* and 'charismatic' initiators are regular phenomena in ancient religious life, cf. Burkert (1987), 31; but whereas *θίασοι* were often 'fully integrated into the complex structures of family and *polis*' (32), charismatics often evoked suspicions, cf. *ibid.* 44, Parker (1996), 162, 334, and below.

⁴⁹ Cf. Ar. *Au.* 974–89 and the famous painting in the Villa dei misteri in Pompeii. The story about Epicurus serving the same function (Diog. Laert. 10. 4) is, however, probably influenced by Demosthenes. The regular use of books is attested by an edict of Ptolemy Philopator or Epiphanes (cf. Fraser 1972, ii. 346) who orders all mystery priests to hand in their *ἱεροὶ λόγοι*, cf. Burkert (1987), 70. On references to written sacred texts as a device of marginalization (in Eur. *Hipp.* 952–7) cf. Parker (1996), 55, Henrichs (2003), 216.

thread in all his occupations. So far, the description may hint at an obscure rite and not one of high repute, but not necessarily one that must be fundamentally condemned. What is probably the most derogatory element in this passage is the remark that Aeschines hung around (or literally even 'rolled around', *καλινδεῖσθαι*) with the drunken followers of his mother. This inappropriate company for a boy is the only disgrace *per se*.⁵⁰ The word *καλινδεῖσθαι* always has a pejorative connotation.⁵¹ Aeschines' contact with revellers does not fit the boasts about his life which Demosthenes announces Aeschines will advance. The focus of the whole passage is not on religious offences but on Aeschines' social situation. His presence at the symposium may show that the rites were not particularly prestigious and were rather an affair of the lower class.⁵² That is the tenor of Aeschines' career: company not appropriate for a boy of good pedigree, bribery during his term as under-secretary, and living on the choregos's expense during his activity on the stage of the theatre (§200). The derogatory remarks segregate Glaucotea's private mysteries from 'proper' cult; the religious surrounding is only a sign of 'class' affiliation.

The second passage builds on the quotation from Creon's speech in Sophocles' *Antigone*. Demosthenes first has an extensive passage read out by the clerk, including the lines (189–90)

ἡδ' ἐστὶν ἡ σώζουσα, καὶ ταύτης ἔπι
πλέοντες ὀρθῆς τοὺς φίλους ποιοῦμεθα.

I know she (sc. the state ship of our country) saves us and it is by sailing steadily on her that we preserve our friends.

He then turns it against Aeschines repeating the first line but changing the subsequent text (§249):

ἡδ' ἐστὶν ἡ σώζουσα καὶ ταύτης ἔπι τελοῦσα μὲν ἡ μήτηρ αὐτοῦ καὶ καθαίρουσα καὶ καρπουμένη τὰς τῶν χρωμένων οὐσίας ἐξέθρεψε τοσοῦτους τουτουσί.

I know she (sc. the state ship of our country) saves us and it is by sailing steadily on her that his mother, by performing initiations, purifying, and exhausting her clients' proper ties, raised her sons to be such great men.⁵³

⁵⁰ Schol. Dem. 19. 419, cf. Paulsen (1999), 210. The sneering reference to Aeschines' prosecution of Timarchus because of prostituting himself might suggest a sexual connotation, which the Latin *volutari* clearly has (*OLD* s.v. *voluto* 3b); there is, however, no parallel for such a meaning of *καλινδέομαι* or *κυλινδέομαι*; the one coming closest is Plut. *Mor.* 184 F *ἐν πότοις ἐκυλινδεῖτο καὶ γυναιξίν; ὁν προκαλινδέομαι* cf. above, n. 45.

⁵¹ e.g. Isoc. 13. 20, 15. 30; even Xen. *Cyr.* 1. 4. 5 (*ἐκαλινδεῖτο ἐν τῷ πειράσθαι αὐθις βέλτιον ποιεῖν*) is significant through the failure of the attempt.

⁵² An 'Unterschichtenkult' (Baumgarten (1998), 133), *μυστήρια δημοτελῆ καὶ κοινὰ καὶ οὐ πάνυ σεμνὰ* (Schol. Dem. 19. 419); of course, this might not correspond to the facts, but as we can also see from the monument of Aeschines' mother's brother, the family had not been very high on the social scale in her generation, though still in the hoplite class, cf. Harris (1995), 26. Similarly, Harp. s.v. *Ἰσοδαίτης* speaks of *δημώδη γύναια καὶ μὴ πάνυ σπουδαῖα* in the description of Phryne's *θίασος*.

⁵³ Cf. §237.

The surprising shift to the mother and the contrast from the dramatic patriotic statement to the somewhat ridiculous creature who uses the initiation for her and her family's living exposes Aeschines to the audience's ridicule. The reference to Aeschines as an actor playing the part of Creon (§247) has paved the way for the depiction of Aeschines as an upstart. Now, Demosthenes is going to point out his opponent's (allegedly) humble origin. 'Initiating' and 'purifying' are as such neutral expressions, though the derogatory remarks of the earlier reference might have stuck in the dikasts' heads. The phrase 'exhausting her clients' properties'⁵⁴ makes it clear that she (and her sons) lived the life of parasites.⁵⁵ The general negative touch of having to earn one's living would already be sufficient to make it evident that the mother's 'priesthood' is again exploited for creating a social hierarchy between Aeschines and the 'proper' orators or even the idealized audience.⁵⁶ The exploitation of one's clients makes it even worse. From her depiction as a parasite one could also form an impression of her (and her son's) doing damage to society by malicious exploitation of the citizens who followed her. This interpretation, however, is not confirmed by the context: the father, too, has to contribute to the family's budget, and Aeschines takes on jobs for low pay; we hear nothing in their cases about the damage to Athens. So even Glaucotea's draining of her clients does not change the miserable condition of the family – it is the mere livelihood from parasitism that is being criticized.

The third time Demosthenes mentions the religious activity in Aeschines' family he is rather concerned with the relation to the community. He contrasts Aeschines with a benefactor of the state, a son, and a descendant of benefactors who had all been forced into exile or heavily fined for being dangerous to democracy (§§280–4).⁵⁷ In their cases no mercy was given, although their own and their ancestors' public record were as good as could be. When further going into detail about the descendant of Harmodius and Aristogiton he also draws attention to the quasi-religious veneration their merits have earned them from Athenian society; as a reward for the tyrannicide they have been accepted as equals of the gods and heroes in public worship,⁵⁸ having thus reached the highest level of the state cult.

⁵⁴ MacDowell's 'enjoying' (2000, 163) is certainly too weak, for *καρπύομαι* does not have the sense of just 'using' their houses (ibid. 306), but that of 'exhaust, drain, exploit' or 'derive profits from', cf. LSJ s.v. *καρπύω* II 3 and 4.

⁵⁵ It was obviously normal for the leader of unofficial religious associations to live on their followers' money; only Demosthenes' way of expressing it gives it these rather negative overtones.

⁵⁶ Cf. Arist. *Rh.* 3. 2, 1405^a19–20 (*μητράγυρτης* = beggar priest). Earning one's living is generally shameful; mentioning that a woman earned her living on the Agora counted as prohibited slander: Dem. 57. 30–1, cf. Wallace (1994), 116; on orators belonging to the elite and 'laying claim to aristocratic attributes' Ober (1989), 112–18, 280–5 at 284–5. Idealized audience (that is to say one that is represented as of a higher social standing than is true): Ober (1989), 224, Todd (1990a), 164–5, Pelling (2000), 13.

⁵⁷ For details on these men cf. MacDowell (2000), 325–6.

⁵⁸ MacDowell (2000), 326 rightly points out that *ἐξ ἵσου* means they have not actually acquired divine or heroic status. We do not know for sure who the offender is and to which family he belongs. Perhaps his staying unnamed is an indication for his coming from the less distinguished descendants of Aristogiton (cf. Davies 1971, 474–6).

Aeschines is now contrasted with the descendants of the men whom such merits or pedigree did not help. His whole family, Demosthenes claims untruthfully, has done no service to the state (§281):

τὸν δὲ Ἀτρομήτου τοῦ γραμματιστοῦ καὶ Γλαυκοθέας τῆς τοὺς θιάσους συναγούσης, ἐφ' οἷς ἑτέρα τέθηκεν ἰέρεια, τοῦτον ὑμεῖς λαβόντες, τὸν τῶν τοιούτων, τὸν οὐδὲ καθ' ἐν χρήσιμον τῇ πόλει, οὐκ αὐτόν, οὐ πατέρα, οὐκ ἄλλον οὐδένα τῶν τούτου, ἀφήσετε;

The man whose father, Atrometus, teaches school, whose mother, Glaucothea, assembles *thiasoi* for which another priestess was put to death, whose family are people of that sort, whose father and every forebear, like himself, have never availed the city in any way, when you have this man in your power, will you set him free?

After the preparation regarding the social status of Aeschines' mother, Demosthenes can be reasonably sure that the audience is not thinking here of one of the official *θιάσοι* integrated in the state cult.⁵⁹ He corroborates this assumption by adding that for assembling such *θιάσοι* another priestess had been put to death.

There is some confusion as to this priestess.⁶⁰ Little more can be said than what Demosthenes himself states. Probably she led a *θιάσος* worshipping a foreign god. Unless Demosthenes is utterly misleading here and the execution had nothing to do with her religious activities, it is clear that her cult was excluded from official honours and disapproval of it was expressed by the verdict. So he depicts Glaucothea as the leader of a religious association at the boundary of legality.

The case of this priestess is not exceptional. Demosthenes himself prosecuted for *ἀσέβεια* the priestess Theoris, who was believed to have taught slaves to deceive (sc. their masters), probably in the course of mysteries or in connection with a *θιάσος*.⁶¹ The hetaira Phryne, too, had to stand a trial for *ἀσέβεια*, accused of introducing a new god and gathering *θιάσοι*.⁶² The number of known cases⁶³

⁵⁹ Cf. e.g. *IG* ii². 2343 or Isae. 9. 30 for such an official *θιάσος* (and below, n. 64).

⁶⁰ It has been pointed out to me by Malcolm Heath that there seem to be two separate traditions on women put to death on the charge of *ἀσέβεια*: the unnamed priestess who led *θιάσοι* from this passage (plus Schol. Dem. 19. 495b in MS *gT*, to be identified with Menander Rhetor) is possibly identical with the one mentioned in Joseph. *Ap.* 2. 267 who initiated people to (i.e. introduced) foreign gods. In the latter passage, a corrupt *νῦν* has been restored to *Νίνον* by Weil. But Ninos may be the name of another woman, the one whom Menecles prosecuted and who was accused of preparing love potions: Schol. Dem. 19. 495a in MS *A* (not Menander), Dem. 39. 2, and Dion. Hal. *Din.* 11, who also speaks of a priestess. Both Schol. *A* and Dionysius could to some extent mix the two up. However, all these charges could lead to an *ἀσέβεια* trial and might possibly have been brought forward at the trial of a single person, cf. Bauman (1990), 117, Dillon (2002), 105.

⁶¹ Dem. 25. 79–80, Plut. *Dem.* 14. 6. Bauman, loc. cit. assumes the deceit might have been based on magic, for which see Pl. *Leg.* 933 c. Teaching slaves how to deceive their masters (Plut. *Dem.* 14. 6), if it took place in the context of mysteries, implies the low social standing of Theoris' cult. As we learn that the charge was *ἀσέβεια* (*FGrH* 328 F 60), this context is likely.

⁶² Anon. Seg. 215 (*Rhet.* i/2. 390 Spengel).

⁶³ If the priestess Demosthenes is referring to was not Ninos, we must count her as well.

suggests that the phenomenon was familiar to the Athenians and that it was regarded as a punishable offence.⁶⁴

The question of what deity Glaucothea worshipped and what consequences Aeschines' participation in the rites had are not addressed. It is disapproval of the type of cult alone that is expressed in Demosthenes' short reference. Apart from the fact that mainly marginal groups are concerned, the problem is competition for control of the religious activity of the citizens. It has been pointed out that rigid intervention against dubious cults was a means to prevent the subversion of society. By the execution of the leaders of cults the public could guarantee a certain extent of conformity.⁶⁵ The 'closed society, integrated by common orientation, ritual, and interest' clashed with the ideal of a religious community constituted by the *πόλις*.⁶⁶ If Athenian *dikasts* convicted someone for 'introducing new gods', 'assembling *θίασοι*' or the like, this was a sort of punishment for transgression of the norm and evasion of state control.⁶⁷

So when Demosthenes alludes to the priestess being put to death because of the rites she performed, he refers to a normative, restrictive act of the *πόλις*. The admission of Harmodius and Aristogiton to state cult is contrasted with persecution of rites such as Glaucothea used to administer. Their vital role in the constitution of democracy is opposed to her sectarianism and her whole family's uselessness to the state.

All three references to the activity of Aeschines' mother show her on the margin of society or beyond in different respects. It is the contrast to the 'regular' official cult and the state that is highlighted. This is done in two ways: on the one hand, she is depicted as a 'beggar-priest', a laughing-stock in comedies and at the lower

⁶⁴ The term *θίασος* itself, however, was a vague and neutral term for religious associations. Some *θίασοι* even took on public functions. The phratry of Demotionidae, for example, consisted of subsections called *θίασοι* that played a role in the admission of people in the citizen body (*IG* ii². 1237. 71 4; cf. Hedrick 1990, 57 and below, Ch. 8). Some inscriptions of other *θίασοι* bear the mark of organizations with official character. The headers start like public decrees: *ἐπὶ ἀρχοντος (τοῦ δεῖνα) ... ἀγορὰ κυρία κτλ.*, e.g. *IG* ii². 1263. Andrewes (1961), 9 suggests that all ordinary members of a phratry were also members of a *θίασος*. Restrictions to their freedom of assembly must be stated expressly (*LSCG* 36. 2 4). How the Athenians distinguished the prohibited *θίασοι* from the official ones is unclear; that they made the distinction is not: Phryne's prosecutor Euthias seems to suggest an official separation of legal and illegal (*ἐκθεσμοὶ*) *θίασοι*, cf. Anon. Seg. 215 (*Rhet.* i/2. 390 Spengel).

⁶⁵ Cf. D. Cohen (1991), 216-17. Political pressure seems to be quite obvious in the case of Demades, convicted for introducing Alexander as a god (*Ath. Deipn.* 6. 251 B). Trampedach (2001), esp. 154 5 emphasizes that the known cases of *ἀσέβεια* trials include even more aspects of subversion, e.g. of gender roles or hierarchies. Rudhardt (1960), 104 5 explains that behaviour towards the city is as much a matter of piety and impiety as that towards gods. Thus we might be able, if not to separate the civic from the religious aspect, then at least to state the existence and importance of the civic aspect (cf. also the Introduction).

⁶⁶ The ideal of the centralized religious community, cf. Sourvinou-Inwood (1990), 297; the quotation is from Burkert (1987), 44.

⁶⁷ However different the defence speeches of Socrates written by Plato and Xenophon are, they do not deal so much with how the gods react, but with conformity to the rites of the *πόλις*. On the legal introduction of new gods cf. Garland (1992), Auffarth (1995).

end of the social scale.⁶⁸ On the other hand, rites of the sort she performs have previously been banned by a vote of the popular courts (§281); she is like a pariah in the religious community of Athens which is coextensive with the civic community. Aeschines is not blamed directly for irreligious behaviour. His role in the rites is just inappropriate for a boy, future politician, and prosecutor of Timarchus. The references present him as the child of a social and religious ghetto, an alien not only to the exclusive group of upper-class men active in politics, but even to the average Athenian. He is depicted as a figure with whom identification is not desirable. In this respect, the exploitation of religious motifs is not different from the normal slander on the opponent's origins in other speeches.⁶⁹

The treatment Demosthenes gives to Aeschines also stretches to the rest of his alleged allies and collaborators. Philocrates is treated with contempt as a *μαρός*.⁷⁰ Other Greek traitors along with Philip are insulted, partly in religious terms.⁷¹ Finally, Demosthenes turns to Aeschines' supporters at the trial itself. First, he attacks Aeschines' brothers-in-law who helped him against Timarchus: the one, Philo (mocked as Nicias by Demosthenes), for being a mercenary of Chabrias, the other, Epicrates (given the name Cyrebio), for going in processions without a mask (§287). Philo has joined in the expedition against the Persians Chabrias undertook 'without the approval of the people' (Diod. Sic. 15. 29. 2). The lack of approval (if not disapproval) on the part of the assembly may be the offensive element in Philon's actions, while Epicrates commits a breach of festival rules. His failure to wear a mask probably means that he insulted citizens at the Dionysiac procession without the obligatory disguise.⁷² This means that, on the one hand, he has done things in everyday dress that are forbidden in normal life: his slanders and insults were insolent and outrageous.⁷³ On the other hand, he has failed to meet the requirements for taking part in the procession, not caring about the ritual regulations. He thus infringes the religious rules that demand adherence to the ritual.⁷⁴ Thus he

⁶⁸ The *μητραγύρται* too formed (temporary) *θείασσι* and collected money for their cult, cf. Burkert (1987), 35. Three comedies are known that were named from these priests (Menander's *Metragyrtes*, Antiphanes' *Metragyrtes* or *Menagyrtes*, and Philemon's *Agyrtes*, which refers to the priest rather than the dice-throw), and ridicule or contempt is combined with these figures in Cratinus *PCG* 66, Antiphanes *PCG* 157, and Arist. *Rhet.* 3. 2, 1405^a20.

⁶⁹ e.g. Midias as a changeling, Demosthenes as a Scythian etc. (Dem. 21. 149, 45. 30, Aeschin. 2. 78, 3. 171 2, Din. 1. 15).

⁷⁰ One could understand this word as a reference to the impiety perpetrated by betraying one's own city. However, as shown in the Introduction, the term is so common as a colourless abuse that we need not suppose any significant religious connotation, especially since nothing in the context indicates a deeper religious significance.

⁷¹ *ἀνοσιώτατοι* §156, no shame to face sun, earth, sanctuaries, tombs §267.

⁷² Aeschin. 2. 151 specifies that Demosthenes means the procession at the Dionysia, which 'was essentially a religious procession' (Pickard-Cambridge 1968, 61). According to Frontisi-Ducroux (1992), 249, the core of Demosthenes' allegation is 'n'avoir pratiqué le rituel qu'à demi.'

⁷³ This was indeed an objection, cf. Dem. 18. 11, 122 4: *ἀρρητα* or *ἀπόρρητα* are not allowed outside the procession.

⁷⁴ '[U]ne infraction au code religieux qui exige d'associer l'uniforme au comportement rituel', Frontisi-Ducroux (1992), 250; she states that this is a form of impiety. Cf. Theophr. *Char.* 6. 3 (where the text is uncertain).

shows both antisocial civic behaviour and a breach of cult regulations. As Demosthenes does not speak about what Epicrates did (apart from not wearing the mask) the second aspect might be predominant. Aeschines feels compelled to deny the objections without going into details. The accusations against the brothers-in-law are followed by an allusion to the alleged prostitution of Aeschines' brother. The juxtaposition of three different sorts of offence (treason, disobedience to cultic rules, and prostitution) shows that Demosthenes does not aim at a specifically religious denigration of Epicrates, but at discrediting Aeschines' relatives in general, by stressing their moral baseness and their wilful exclusion from society in parallel to Aeschines' own conduct.

The argumentation with religious motifs presented so far is not used in order to depict Aeschines as defiled or provoking divine anger. Demosthenes stresses the general point that Aeschines is not tolerable as a member of Athenian society. He has demonstrated his neglect in his handling of Athenian affairs by not caring for Athens' dignity in administering the oaths. He has left the community of citizens and expressed his change of allegiance by partaking in Philip's and Thebes' sacrifice and prayers against Athens. Finally, his origin is not worthy to say the least of a politician, and his mother practised rites declared incompatible with Athenian religion by the courts of law. The specific qualities of religion are not essential to the arguments so that the points he makes are in line with the argumentation conducted without reference to religion. The attack in social terms and the case for Aeschines' self-segregation predominates among arguments drawing on religious concepts, although Demosthenes might at some points have had the opportunity to intimidate the dikasts. He could have described Aeschines' treason as a defection from the gods of the πόλις or hinted at how the gods would react, if that traitor against Athenian soil stayed in the city.

His general tendency to reduce the prominence of the supernatural in the argumentation can be seen in his treatment of Aeschines' reference to the goddess Rumour (Pheme), in the speech *Against Timarchus*. Aeschines had used the rumour of Timarchus' being a prostitute as evidence for his actually being one, justifying this by the divinity of Rumour already stated by Hesiod.⁷⁵ Several sources attest her divine status, although they rather see her as spreading news and mainly in the context of battles.⁷⁶ Aeschines reaffirms his statement in his reply to the prosecution speech.⁷⁷ By contrast, Demosthenes turns the whole argument against Aeschines and his fellow envoys: not even all Athenians knew Timarchus, but the whole world said that the ambassadors had taken money (§244):

⁷⁵ Aeschin. 1. 128 30, Hes. *Op.* 763 4, cf. Ch. 5.

⁷⁶ Hesiod speaks of rumour in the same sense as Aeschines (cf. also Pl. *Leg.* 838 D, where φήμη becomes 'consecrated'), but on the Athenian cult see Schol. Aeschin. 1. 279b with Hdt. 9. 100.

⁷⁷ Aeschin. 2. 145.

τὸν μὲν Τίμαρχον οὐδ' οἱ πρόσχωροι πάντες ἐγίγνωσκον, ὑμᾶς δὲ τοὺς πρέσβεις οὐδεὶς Ἑλλήνων οὐδὲ βαρβάρων ἔσθ' ὅστις οὐ φησι χρήματ' ἐκ τῆς πρεσβείας εἰληφέναι. ὥστ', εἴπερ ἔστ' ἀληθὴς ἡ φήμη, καθ' ὑμῶν ἔστιν ἡ παρὰ τῶν πολλῶν, ἣν ὅτι πιστὴν εἶναι δεῖ καὶ θεὸς νύ τίς ἐστι καὶ αὐτή, καὶ ὅτι σοφὸς ἦν ὁ ποιητὴς ὁ ταῦτα ποιήσας, σὺ διώρισας αὐτός.

Not even all of his neighbours knew Timarchus, but absolutely no one, Greek or barbarian, denies that you envoys accepted bribes on the embassy. So, if rumour is indeed true, you envoys are incriminated by the rumour spread by the masses, since you yourself insisted that rumour must be reliable, for 'she too is a god,' and that the poet who wrote those verses was wise.

Demosthenes does not claim the divine force of Rumour for his argument, but keeps his distance from this sort of argumentation: instead, he insists that Aeschines is attacked by the evidence of rumour *according to his own contention*. The definition of Rumour as a reliable goddess has been made by himself. Thus Demosthenes can present his 'evidence' and even show that Aeschines 'accuses himself', while not drawing on the religious significance of rumours.

Aeschines in Direct Conflict with Religion

There are, however, passages in which the accusation seems to use religious language and contents not just as a framework to highlight Aeschines' offences. The attribute 'enemy of the gods' (θεοῖς ἐχθρός, §§95, 250) can be understood as mere slander.⁷⁸ The sneer 'this scoundrel, enemy of the gods, and secretary' (§95) is a mocking climax of abuse with 'secretary' ironically being the most offensive expression. Had Demosthenes wanted to emphasize Aeschines' defilement, he would not have used this surprising turn. The only word that normally has a religious meaning is ἀλιτήριος (§226). However, the religious connotation of the word cannot be very strong in this instance:⁷⁹

οὐκ οὖν δεινόν, ὦ ἄνδρες Ἀθηναῖοι, καὶ σκέτλιον τοῖς μὲν τὰ Φιλίππου πράγμαθ' ἡρημένους θεραπεύειν οὕτως ἀκριβῆ τὴν παρ' ἐκείνου πρὸς ἑκάτερα αἰσθησιν ὑπάρχειν, ὥστε ἕκαστον, ὥσπερ ἂν παρεστηκότος αὐτοῦ, μὴδ' ὦν ἂν ἐνθάδε πράξῃ μὴδὲν ἡγεῖσθαι λήσειν, ἀλλὰ φίλους τε νομίζειν οὓς ἂν ἐκείνῳ δοκῇ καὶ μὴ φίλους ὡσαύτως, τοῖς δὲ πρὸς ὑμᾶς ζῶσι καὶ τῆς παρ' ὑμῶν τιμῆς γλιχομένοις καὶ μὴ προδοεωκόσι ταύτην τοσαύτην κωφότητα καὶ τοσοῦτο σκότος παρ' ὑμῶν ἅπαντάν, ὥστε τοῖς ἀλιτηρίοις τούτοις ἐξ ἴσου νῦν ἐμὲ ἀγωνίζεσθαι, καὶ ταῦτα παρ' ὑμῖν τοῖς ἅπαντ' εἰδόσιν;

⁷⁸ Cf. Intro. n. 23.

⁷⁹ Religious meaning: Parker (1983), 108 9. There is no indication that the explanation in the scholia (Schol. Dem. 19. 444) is right that the word comes from stealing grain, cf. Hatch (1908), 160. The passages Hatch gives for the meaning 'those who have committed some offence or crime, especially against the state' (1908, 158, cf. Raubitschek 1947, 260 1) all seem to have a religious connotation, apart from Dem. 19. 226. However, it is used as a mere term of abuse e.g. in Straton PCG 1. 49, Men. Epir. 894, PCG 608.

Have things not reached a thoroughly wretched state, men of Athens, when those who have chosen to serve Philip have their conduct towards each side watched so closely by him that each of them supposes that nothing he does in Athens will escape Philip's notice, as if he were standing by in person and personally decides in each case who is friend and who not, while you are so deaf and blind to those who devote their lives to you, who strive for your esteem and never betray it, that these *aliterioi* and I now compete on an equal basis even though you full know what's going on?

Nothing in the context evokes religious associations. We should therefore take the word as no more than a term of abuse – an expression of loathing drawn from the register from which a large part of Greek slander derives.⁸⁰ The words do have some potential for use in religious denigration, as we shall see. Demosthenes, however, does not exploit them in this way. Even if he chose them for their religious origin, only those willing to hear could find religious allegations in these remarks. Demosthenes does not state anything pertinent or explain the basis of these 'allegations' here.

In two other passages the allegations against Aeschines are more serious. In order to show that Solon hated 'men like him' (§254) Demosthenes has the start of the *Eunomia Elegy* recited.⁸¹ He goes on to interpret the events in the run-up to the trial as an indication of the divine goodwill mentioned in Solon's poem (§§256–7):

ἀκούετε, ὦ ἄνδρες Ἀθηναῖοι, περὶ τῶν τοιούτων ἀνθρώπων οἷα Σόλων λέγει, καὶ περὶ τῶν θεῶν, οὓς φησι τὴν πόλιν σῶζειν. ἐγὼ δ' αἰεὶ μὲν ἀληθῆ τὸν λόγον τοῦτον ἡγοῦμαι καὶ βούλομαι, ὥς ἄρ' οἱ θεοὶ σῶζουσιν ἡμῶν τὴν πόλιν τρόπον δέ τινα ἡγοῦμαι καὶ τὰ νῦν συμβεβηκότα πάντ' ἐπὶ ταῖς εὐθύναις ταυταῖσι δαιμονίας τινὸς εὐνοίας ἔνδειγμα τῇ πόλει γεγενῆσθαι. σκοπεῖτε γάρ. ἄνθρωπος πολλὰ καὶ δεινὰ πρεσβεύσας, καὶ χώρας ἐκδεδωκώς ἐν αἷς τοὺς θεοὺς ὑφ' ὑμῶν καὶ τῶν συμμάχων τιμᾶσθαι προσήκεν, ἡτίμωσεν ὑπακούσαντά τιν' αὐτοῦ κατήγορον. διὰ τί; ἵνα μήτε ἔλεον μήτε συγγνώμης ἐφ' οἷς αὐτὸς ἡδίκηκεν τύχη. ἀλλὰ καὶ κατηγορῶν ἐκείνου κακῶς λέγειν προείλετο ἐμέ, καὶ πάλιν ἐν τῷ δήμῳ γραφὰς ἀποίσειν καὶ τοιαύτ' ἡπείλει. ἵνα τί; ἵνα ὥς μετὰ πλείστης συγγνώμης παρ' ὑμῶν ὁ τὰ τοῦτου πονηρέματα ἀκριβέστατα εἰδὼς ἐγὼ καὶ παρηκολουθηκῶς ἅπασι κατηγορῶ.

Men of Athens, you hear what Solon has to say about men like Aeschines, and about the gods who in his view preserve the city. I have always believed that Solon's view is true, and it is my wish that the gods do preserve our city. I also believe that the very fact that this audit has taken place today is somehow an indication of divine concern for the city. Consider. A man does a thoroughly disastrous job as envoy, gives up territory where you and your allies were supposed to worship the gods, and then disenfranchises a citizen, who, though once his accuser, duly appeared in court. What for? So that he may meet with neither sympathy nor leniency for the crimes he committed. When he prosecuted Timarchus, he chose to denounce me, and later he kept threatening in the assembly to

⁸⁰ Cf. Dover (2002), 95.

⁸¹ On the extent of the quotation cf. Rowe (1972) against Wilamowitz (1893), ii. 306.

bring charges and the like. What for? So that I might prosecute him with the utmost indulgence on your part, with the fullest understanding of his evil tricks, and with experience of all his crimes.

Aeschines has acted in a way that makes his conviction all the more probable. He has prosecuted and disenfranchised Timarchus so that he will get no mercy himself;⁸² he also threatened Demosthenes with prosecution. So the dikasts will be indulgent to the speaker in the present trial. The connection between Aeschines' actions and the gods is looser than comparable interventions of the gods in other speeches, but the idea is clearly the same as, for example, in Lysias' *Against Andocides* (§19):

ὁ δὲ θεὸς ὑπῆγεν αὐτόν, ἵνα ἀφικόμενος εἰς τὰ ἁμαρτήματα ἐπὶ τῇ ἐμῇ προφάσει δοίη δίκην.⁸³

The god brought him back, so that he could come to the scene of his crimes and pay the penalty at my instigation.

Demosthenes does not talk about the defendant's return to Athens, which makes the trial possible, but instead how his opponent has made sure of his own condemnation. The gods do not lead Aeschines to trial, that is, they do not make trial and conviction possible, but change the dikasts' attitudes. Only the principal idea of infatuation is shared by both texts.⁸⁴

In our sources the gods are commonly referred to by Athenians as intervening in legal procedures only if the case touches upon matters of impiety and perjury.⁸⁵ If we transfer this rule to our passage, it seems that Demosthenes wants to describe the alleged betrayal of Phocis (the land 'in which the gods should have been honoured by you and your allies', §257) as impiety. However, this is only an additional point, made in a parenthesis without connection to the main argument of the passage.⁸⁶ Demosthenes' main point is rather that the gods

⁸² I have retained the text of the manuscripts, against Dilts's text, who reads Weil's conjecture *ὑπακούσαντά τι τὸν αὐτοῦ κατήγορον*. As Paulsen (1999), 251 points out, *ὑπακούσαντα* (§257) means simply that he obeyed the summons. This is the natural interpretation in a context that abounds with terms from litigation. MacDowell's translation (2000, 313) 'paying attention' or 'responding' (sc. to the gods in his prosecution of Aeschines) finds no support in the rest of the text: Demosthenes nowhere alludes to Timarchus' 'divine mission' in prosecuting Aeschines. Moreover, if *ὑπακούσαντα* were to mean 'responding to the gods' the connection with *κατήγορον* is not easily understandable, and we should rather expect *κατήγορον ὄντα* or *κατηγοροῦντα*. Timarchus serves the gods' plans only in that Aeschines' mercilessness is revealed more clearly if he does not win the trial by default.

⁸³ Cf. also Lycurg. 91 οἶμαι θεῶν τινα αὐτὸν ἐπ' αὐτὴν ἀγαγεῖν τὴν τιμωρίαν and Dem. 24. 121 οἶμαι δέ... οὐκ ἀπὸ ταυτομάτου τὴν ὕβριν καὶ τὴν ὑπερηφανίαν ἐπελθεῖν Ἀνδροσίωνι, ἀλλ' ὑπὸ τῆς θεοῦ ἐπιπεμφθεῖσαν.

⁸⁴ In Demosthenes' speeches, one could compare Philip being struck by restlessness sent by a god to stop him (Dem. 4. 42), cf. Ch. 6.

⁸⁵ Mikalson (1983), 28.

⁸⁶ Moreover, it is a false objection because Delphi is still accessible to the Athenians, but it may be allowed as rhetorical exaggeration.

want Athens to prosper and therefore stop the one who harms her. He focuses on benevolence, not on Aeschines' attack on their worship.

Still, however, it seems clear that Aeschines is driven by some divine intervention. This passage comes closest to an open attack against Aeschines for defilement and as a perpetrator of impiety. But Demosthenes avoids stating explicitly that Aeschines was induced to prosecute by a god. He is careful in his formulation that there is somehow (*τρόπον τινά*) an indication of divine goodwill; compared with Lysias, Demosthenes is extremely cautious in his exploitation of the motif of divine influence. It is interesting to see how the gods' intervention affects the trial: Aeschines will not be granted pity or forgiveness (sc. from the dikasts); instead, Demosthenes will receive the dikasts' pardon. The gods do not intervene to hand over the defendants for punishment: Aeschines has only influenced the disposition of the dikasts in favour of his opponent and precluded himself from profiting by the normal sympathetic feelings a defendant may count on: pity (*ἔλεος*) and leniency (*συγγνώμη*). The orators frequently warn against them to exclude an acquittal despite obvious guilt, often in combination with the appeal to judge according to the laws – that is to stick to the heliastic oath.⁸⁷ So in Demosthenes' argumentation the gods apparently just see to it that the dikasts do their job properly.

When applied to Demosthenes, the word *συγγνώμη* seems to mean something different: he needs the dikasts' pardon for his prosecution – as the one who knows best all the misdeeds of Aeschines. Demosthenes nearly apologizes for initiating the trial. He is here defending himself against the common prejudices against sycophancy.⁸⁸ The emphasis on his special knowledge, however, probably alludes to the accusations that he prosecutes his fellow ambassador with whom he has shared in dining and sacrificing.⁸⁹ The fact that he does not mention these objections need not contradict this interpretation: he has already dealt with them and stated that it is the traitor who abandons the common code and offends salt and libations (§191). When he asks for forgiveness in this place, he is again acting partly in defence. He justifies his irreligious act of violating the shared libations with another religious argument about the gods intervening and causing the dikasts to condone this blemish. The gods thus 'prefer' to see Aeschines punished. However, the argument is formulated carefully: the gods are not explicitly described as agents and the impact of what seems to be their intervention is

⁸⁷ e.g. Lys. 10. 26, 30, 14. 40, Dem. 22. 57, Hyp. 4. 5; cf. Fränkel (1878), 453.

⁸⁸ In Aeschines' reply he is a sycophant in §§5, 39, 99, and he anticipates it in §§98, 222; in other speeches, e.g. Lys. 22. 1–2, Aeschin. 1. 1, and Lycurg. 3, the speakers have to defend themselves against the possible objection that they are sycophants; on the concept of sycophancy cf. Harvey (1990), 107 (*συκοφάντης* as a 'value word') and Arist. *Rh.* 2. 4, 1382^a6–7. Demosthenes is frequently accused of sycophancy: e.g. Aeschin. 3. 256, Din. 1. 6.

⁸⁹ These accusations seem to have been quite serious: Demosthenes anticipates the complaints of Aeschines, who really puts them twice in his defence (Aeschin. 2. 163, 183), cf. above, p. 60. It seems to have been a common theme in the propaganda against Demosthenes, just like the murder of Nicodemus.

complicated. They lead Aeschines to act in a way that influences the dikasts' minds so that their reception of the pleas changes. In the way he phrases the passage, Demosthenes leaves the details unexplained. He describes the mechanism by which the dikasts sympathize with his cause. This part is understandable without any activity by the gods. Only in addition are the course of events and Aeschines' earlier activity as prosecutor given an interpretation as signs of divine intervention. Demosthenes' description is appropriate to evoke the feeling of divine machinations in those who want to feel them. And even they are rather reassured by the idea of benevolent gods than instigated against Aeschines as a haunted wretch. The rest of the audience get the stock motif of divine goodwill⁹⁰ together with a 'rational' explanation why they should not show mercy: Aeschines has set the precedent and for this reason the dikasts are to let Demosthenes go on with the accusations and fulfil their duty as dikasts on behalf of Athens.

The motif of the gods' goodwill is taken up again later (§§297–9). When Demosthenes warns the dikasts not to acquit Aeschines for Eubulus' sake, he has an oracle read out that the citizens should stick together and not betray the city. Demosthenes concludes that it is the will of the gods that traitors be condemned: 'Zeus, Dione, and all the gods are urging all citizens to be of one mind in punishing anyone who serves the enemy' (§299). Since he presents Aeschines as a traitor, he may imply that the gods want to see him punished. Generally formulated oracles, however, are the only way the gods 'interfere': neither do they cause any direct action, as in the previous case, nor do they speak out directly against Aeschines. That means Demosthenes builds up moral pressure on the dikasts and argues with an oracle, but he never mentions Aeschines by name, and 'the traitors' are only said to contravene the will of the gods for preservation of the city, not to be inimical to the gods themselves. The gist of the passage is the confrontation of two authorities: Eubulus' against the gods', not the portrayal of Aeschines as an offender against the sacred realm.

The second passage does not deal with any past intervention of the gods but holds out the prospect of a future one, which the Athenians provoke themselves: Demosthenes reminds the dikasts of the curse pronounced at every session of the assembly and the council.⁹¹ Since he postulates that Aeschines has betrayed the city, he can describe his opponent as accursed (*κατάρατος*, §70). He even has the formula read out by the clerk and summarizes that Aeschines is a man 'who you pray to [the gods] should be destroyed, himself and his family and house'.⁹²

The word *κατάρατος*, just like *μιαρός*, does not necessarily associate a person with defilement. Its meaning has been diluted by excessive use in everyday speech.⁹³ Since, however, Demosthenes is talking about a specific curse and the

⁹⁰ On this motif cf. Ch. 6.

⁹¹ Rhodes (1972), 36–7.

⁹² *ὃν ἐκεῖνοις εὖχεσθ' ἐξώλη ποιεῖν αὐτὸν καὶ γένος καὶ οἰκίαν, τοῦτον ἀφείητ' αὐτοί*, §71.

⁹³ Cf. Ar. *Pax* 33 with Olson (1998), 73, Parker (1983), 4, and Wankel (1976), 967.

curse is not alluded to in passing but even cited, the word might be felt to have its original strength.

We do not know the exact formula, but a parody has been transmitted in Aristophanes' *Thesmophoriazusae*, which runs like this:

εὔχεσθε τοῖς θεοῖσι τοῖς Ὀλυμπίοις	330
καὶ ταῖς Ὀλυμπίαισι, καὶ τοῖς Πυθίοις	
καὶ ταῖσι Πυθίαισι, καὶ τοῖς Δηλίοις	
καὶ ταῖσι Δηλίοις, τοῖς τ' ἄλλοις θεοῖς.	
εἴ τις ἐπιβουλεύει τι τῷ δήμῳ κακὸν	
τῷ τῶν γυναικῶν, ἢ ᾧ περικυκλῆται	335
Εὐριπίδῃ Μήδοις <τ'> ἐπὶ βλάβῃ τινὶ	
τῇ τῶν γυναικῶν, ἢ τυραννεῖν ἐπινοεῖ,	
ἢ τὸν τύραννον συγκατάγειν, . . .	
ἢ πεμπομένη τις ἀγγελίας ψευδεῖς φέρει,	342
ἢ μοιχὸς εἴ τις ἐξαπατᾷ ψευδῇ λέγων	
καὶ μὴ δίδωσιν ἂν ὑπόσχηταί ποτε, . . .	
κακῶς ἀπολέσθαι τοῦτον αὐτὸν κῶκίαν	349
ἄρᾱσθε, ταῖς δ' ἄλλαισιν ὑμῖν τοὺς θεοὺς	350
εὔχεσθε πάσαις πολλὰ δοῦναι καγαθὰ.	

Pray to the Olympian gods and goddesses, to the Pythian gods and goddesses, to the Delian gods and goddesses, and to the other gods as well. If anyone conspires in any way to harm the *demos* of the women; or negotiates secretly with Euripides and the Medes in any way to the women's harm; or contemplates either becoming a tyrant or abetting a tyrant's installation; . . . or when sent on a mission brings back false messages; or is a lover who deceives a woman with lies or does not give what he promised . . . : put a curse on every such person, that they perish wretchedly and their families along with them! As for the rest of you, ask the gods to give you every blessing!

Except for the metre, the feminine forms, and some contents typical for the play the curse is likely to resemble the actual curse as spoken in 411.⁹⁴ Some references to the Mede and to tyrants may have been removed before 343, but the form of the curse is recognizable. Lines 349–50 correspond to Demosthenes' paraphrase. The clause that is applied to Aeschines must deal with lies since this is what Demosthenes accuses him of in this passage (§§68, 70). In the original curse the wording might resemble Aristophanes' line 342.⁹⁵

So far, it seems clear that Demosthenes here states that Aeschines is doomed and that the dikasts should take care that he is removed from Athens before he brings destruction upon the whole city. The formula is certainly stronger than

⁹⁴ Cf. Rhodes (1972), 37.

⁹⁵ Rhodes (1972), 36–7 infers from Din. 1. 47 and 2. 16 that there was a clause against those 'who took bribes to speak against the interests of the city' and from Dem. 18. 282, 23. 97, and Din. 1. 47 that the curse included a clause about deceiving (*απατᾶν*) the people. There is no other evidence for the use of the word *ψεύδασθαι*. It would, however, be strange, if Demosthenes gave no hint whatever on the very offence he was talking about. Therefore there may have been another clause.

some other examples of curses directed against people who have committed an offence against public order and are now formally rejected.⁹⁶ By contrast, it makes sense to assume that a formula like ‘pray to the Olympian and the other gods’ preceded the clauses of the curse in the assembly.⁹⁷ This gives the curse some religious significance;⁹⁸ Demosthenes also states that the Athenians call on the gods to punish people liable to the curse (§71).

However, in the particular context the religious significance is diminished by the fact that the curse and its menace to Aeschines, that is the defilement and its possible consequences, are not the point of the argument. It is the dikasts’ duty as representatives of the city⁹⁹ that Demosthenes focuses on (§71):

πῶς οὖν οὐκ ἄτοπον καὶ υπερφνὲς ἂν πεποιηκότες ὑμεῖς εἴητε, εἰ ἄρ’ ἂ προστάττετε, μάλλον δ’ ἀξιοῦτε ποιεῖν ὑπὲρ ὑμῶν τοὺς θεοὺς, ταῦτ’ αὐτοὶ κύριοι γεγεννημένοι τήμερον μὴ ποιήσατε, ἀλλ’ ὃν ἐκείνοις εὐχεσθ’ ἐξώλη ποιεῖν αὐτὸν καὶ γένος καὶ οἰκίαν, τοῦτον ἀφείητε αὐτοῖς; μηδαμῶς ὅς γάρ ἂν ὑμᾶς λάθῃ, τοῦτον ἀφίετε τοῖς θεοῖς κολάζειν ὃν δ’ ἂν αὐτοὶ λάβῃτε, μηκέτ’ ἐκείνοις περὶ τούτου προστάττετε.

How would it not be a bizarre, monstrous act on your part if what you command, or rather, expect the gods to do on your behalf, you yourselves fail to do today when it lies within your power, and if you yourselves set free the very man whom you entreat the gods to obliterate along with his family and household? Do not do that! Should anyone escape your notice, leave it to the gods to punish him. But should someone fall into your hands, do not give the gods any more commands in regard to him.

Demosthenes requests the dikasts not to ask the gods for something they can do themselves according to the simple rule that the gods help only him who helps himself.¹⁰⁰ Demosthenes compels them to vote against Aeschines by not even reminding them of their function within society but focusing on one of the basic rules of conduct: consistency. The religious element of the curse becomes irrelevant to the working of the argument. The description of Aeschines as accursed is clearly implied, but Demosthenes does not further exploit that fact in any way. He does not appeal to the jury to expel Aeschines for the mere fact of

⁹⁶ For example, the inscriptions on Teos differ from the Aristophanic curse in the lack of an invocation at the start, cf. McCabe and Plunkett (1985), nos. 261–2; cf. also Soph. *OT* 238–41.

⁹⁷ It makes a better joke (I suppose), if we regard the addition of the feminine forms in the *Thesmophoriazousae* (ll. 331–3) as an exaggerated statement of female identity and emancipation. The Pythian and Delian gods are added to make a pun out of the word Olympic and its double derivation from Olympia and Mount Olympus, though cf. Ar. *Au.* 869. I see no good reason to assume that Aristophanes should have invented the whole invocation, *pace* C. Austin and Olson (2004), 161.

⁹⁸ A distinction between religious and political curses is misleading. Even where a curse is rather the expression of the mood of the people (Parker 1983, 193–4), one cannot divide the religious form from the ‘human’ content; cf. Sourvinou-Inwood (1988), in particular 30–1, Worthington (1992), 211–12. Faraone (2002), 82 speaks of a ‘spectrum of Athenian oath-curses’ without a distinction of their religious character.

⁹⁹ Hansen (1990), 220 points out the practice of addressing the dikasts as the makers of earlier decisions of the assembly, cf. also Wolpert (2003), giving this phenomenon an ideological foundation.

¹⁰⁰ Cf. Ch. 6 n. 52.

his being liable to the curse. Instead, the reason why it is necessary to convict Aeschines is, in this passage, not Aeschines' offence and the fact that he is cursed, but the dikasts' duty to serve as the enforcers of the public will. If anyone sees Aeschines as a danger because of the curse, that does no damage to Demosthenes' cause or argumentation. His decision to have the formula read out in full clearly owes to the fact that he can gain persuasive force by it. However, as we have found several times in both *Against Midias* and this speech, he leaves such ideas for the dikasts to develop.

The Heliastic Oath

We have seen that the passages that mention Aeschines as defiled in a religious sense are combined with an appeal to the dikasts. Moreover, the whole speech is conspicuous through the pressure it puts on the dikasts in the form of sometimes unusual references to the heliastic oath.

As is conventional,¹⁰¹ the dikasts are reminded several times that they all have taken the oath before entering office. Some of these passages are not particularly significant: in his final appeal before leaving the rostrum (§343), for example, Demosthenes affirms that an acquittal of Aeschines would not be conducive 'to your reputation, your piety, your safety, or anything else.' It is in accordance with the use of the word in Demosthenes to take *εὐσέβεια* as an allusion to the oath (not to Aeschines' possibly staying in Athens despite his defilement).¹⁰² The position of the request is not extraordinary either. Litigants tend to remind their audience of their task at the end of their pleas.¹⁰³

In a number of other references Demosthenes points to the vital function of the oath (and thus of the dikasts' activity) for the whole community. The dikasts are reminded of their responsibility to the city. Right at the start (§1), Demosthenes warns them not to value an individual more than their oath and what is just. The oath is said to be 'for your and the whole city's sake'. In this way the oath is attributed the role of a safeguard of the state and the dikasts are the ones who lend force to it.¹⁰⁴ They are given the power to uphold the community or to

¹⁰¹ According to Johnstone (1999), 37 one can find references to the oath in 29 out of 44 public courtroom speeches. He counts 143 occurrences of certain motifs in 46 speeches (private and public), some passages including more than one motif (148 n. 67). In the *Paraprosbeia* speech alone I count 9 references to the oath (9 in Aeschin. 1, 6 in Aeschin. 3, 3 in Dem. 23, 4 in Dem. 18, 1 in Aeschin. 2 but no such elaborate references as in this speech, in Lycurgus one of the four passages is similar to those in Demosthenes).

¹⁰² Cf. MacDowell (2000), 293 and 354. For a more profound discussion cf. Dem. 18. 1 and Wankel (1976), 112 (and 671), where he says that Demosthenes often uses the word *εὐσέβεια* and the adjective *εὐσεβής* referring to the heliastic oath.

¹⁰³ Dem. 21. 227.

¹⁰⁴ The heliastic oath is thus parallel to the oath of the magistrates (cf. Lycurg. 79); perhaps it has even a higher meaning (so Bonner and Smith (1930 8), ii. 152 n. 6), cf. the (often over-stretched) concept of the 'rule of law', e.g. in Hansen (1990), 240.

favour unjustly the particular interests of a few – who will, above all, be shown to be traitors. Just as Demosthenes is going to present Aeschines as an outsider in Athenian society, the dikasts have the chance to place themselves within society. The oath becomes a touchstone of their civic affiliation.¹⁰⁵

Demosthenes elsewhere tells the dikasts with reference to the oath to stay united and not to yield to an individual (§§296–7): in his attack on Aeschines' supporting speaker he warns of Eubulus as a danger to the sovereignty of the law courts because of his very popularity and authority. Dikasts, laws, and the heliastic oath are named as the foundations that must not be overthrown by a politician. The importance of the three constituents is even emphasized by the oracles that warn of the dissolution of the city's unity.¹⁰⁶ The significance of Demosthenes' use of the oath itself lies on a political level. It guarantees that the facts rather than the personalities of the speakers determine the verdict: if Aeschines is a traitor, he must be condemned even against the will of the leading politician. This appeal to the oath is backed up by reference to the oracle cited above.¹⁰⁷

In another reference to the oath 'for the city's sake' Demosthenes demands consistency in the Athenians' political actions: it would be disgraceful (*αἰσχρόν*) not to attend the Pythia nor send a delegation to the session of the amphictyony on the one hand, but instead in the court, having sworn the oath for the city, to acquit the one responsible for all the evil on the other hand (§§132–3). The word *αἰσχρόν* does not refer to the perjury or its consequences that are to be avoided by the dikasts, but characterizes the shame of not sticking to the decisions they have made as citizens in the assembly. The Games and the oath are likewise fields for the manifestation of a political will. The religious value of the oath only comes out if the absolute normative force is accepted and the consequence from the political act in connection with the Pythia is drawn and viewed as binding.

These are passages in which the oath symbolizes the place of the dikasts at the core of civic institutions. The law court has an eminent function for the security of Athens and the dikasts have the responsibility to drive away the menace of Philip and Aeschines since the heliastic oath obliges them to stay loyal and act

¹⁰⁵ The idea of the dikasts representing the community comes out even more clearly later: Demosthenes remarks that the Athenians (the dikasts) do not need to take political action, but simply to cast their votes for their country (§311) in accordance with divine and human justice. The dikasts are addressed as both dikasts and citizens (cf. above, n. 99); their verdict is a political measure for the state and against a traitor and disruptor of civic traditions (cf. above, p. 52). A conviction is depicted as a patriotic act by which the dikasts associate themselves with their community and everything it stands for; similarly in §284.

¹⁰⁶ The same oracle is read out against Demosthenes by Dinarchus (1. 78, 98; Worthington (1992), 249, 269 assumes that Dinarchus did indeed have the same text read out twice); for Parke (1967), 140 it is nothing more than a mere commonplace of political rhetoric. As we have not yet the full text of the oracles we cannot know whether they referred to the law courts. There is no direct connection between the dominance of a single person in the assembly and the courts and the unity of the state, which is mentioned in the short quotation in §298.

¹⁰⁷ Cf. p. 74.

loyally to the city. By his appeal to the oath Demosthenes tries to unite the dikasts against Aeschines as one of those endangering Athens. This happens in a way that supplements Demosthenes' overall strategy as shown: the exclusion of Aeschines is balanced by the integration of the dikasts. The oath is exploited as a civic ritual that symbolizes the 'obligation to the collective power of the whole group'¹⁰⁸ and thus the cohesive factor that protects the group against any threat from outside (where Aeschines has put himself).¹⁰⁹

In places, however, Demosthenes shows another way of exploiting the heliastic oath, one fundamentally different from this merely social and political meaning. Here he only stresses the religious aspect of the oaths, warning of the consequences of perjury. If Aeschines and his friends have told the truth and fulfilled their promises, Demosthenes says in one place, the dikasts ought to acquit Aeschines, otherwise to condemn him. However, the implications of the vote are referred to in a negative way. The request to acquit Aeschines is phrased: 'do not add perjury to all the evil you suffer'. This case is obviously only rhetorical and not thought of as realistic. The opposite runs (§220):

εἰ δὲ πάντα τὰναντία τούτων καὶ πολλὰ καὶ φιλάνθρωπα εἰπόντες, Φίλιππον φιλεῖν τὴν πόλιν, Φωκέας σώσειν, Θηβαίους παύσειν τῆς ὕβρεως, ἔτι πρὸς τούτοις μείζονα ἢ κατ' Ἀμφίπολιν εὖ ποιήσιν ὑμᾶς, ἐὰν τύχῃ τῆς εἰρήνης, Εὐβοίαν, Ὀρωπὸν ἀποδώσειν εἰ ταῦτ' εἰπόντες καὶ ὑποσχόμενοι πάντ' ἐξηπατήκασι καὶ πεφenaκίκασι καὶ μόνον οὐ τὴν Ἀττικὴν ὑμῶν περιήρηνται, καταψηφίσασθε, καὶ μὴ πρὸς τοῖς ἄλλοις οἷς ὕβρισθε... καὶ ὑπὲρ ὧν οὗτοι δεδωροδοκήκασι ὑμεῖς τὴν ἀρὰν καὶ τὴν ἐπιορκίαν οἰκαδ' εἰσενέγκησθε.

However, if it is exactly the opposite, and these men made many pleasant promises that Philip was well disposed towards the city, that he safeguard the Phocians, that he would put an end to the Theban insolence, and in addition that, if peace were reached, he would more than make up for the loss of Amphipolis and would return Euboea and Oropus if by making these promises, these men utterly deceived you, tricked you, and all but stripped you of Attica, convict them, and do not take the curse and perjury to your homes on top of the other outrages... you suffered and for which these men took payment.

There has been disagreement over what is meant by 'the curse'. MacDowell wants to understand it as the curse of the assembly to which Aeschines is liable.¹¹⁰ This is unlikely because there is no reference back to §70 or any other indication specifying that curse. The second way in which the curse has been interpreted is that of a general consequence of acquitting a guilty person.¹¹¹ We know, however, nothing of such a curse. The easiest way to interpret the passage may

¹⁰⁸ Cole (1996), 228 on the civic oaths in Athenian life in general.

¹⁰⁹ This is not to say that Demosthenes is unusual in his view of the oath: Lycurg. 79 coins the phrase of the oath as the 'glue' of democracy, but cf. also Aeschin. 3. 257, Din. 1. 84.

¹¹⁰ (2000), 295. The possible argument that the definite article has to point to something is not valid as ἐπιορκία has an article, too.

¹¹¹ Shilleto (1874), 177 translates 'the curse [which you will lie under by the acquittal of a guilty criminal]' (his square brackets).

thus be the assumption that 'curse' and 'perjury' are two aspects of essentially the same thing, namely the heliastic oath.¹¹² The emphasis is on two passages of the oath, the first time on the calling down of destruction on oneself, the second time on the promise to judge according to justice and the laws.

The phrase that the dikasts will 'take the curse and perjury home' is more awesome than a simple reference to the bad conscience with which they might leave the court. Entering office each dikast had called destruction upon himself as well as on his house in case he should violate his oath.¹¹³ To take the curse home thus reminds the dikasts of the dire consequences of perjury. Direct intimidation of this sort cannot be found in any other speech of Demosthenes. In connection with the heliastic oath it is not even to be found in any other Attic orator, where we find at best the idea of taking over the acquitted criminal's guilt.¹¹⁴ That means Demosthenes exploits the oath in an extreme way, at the same time avoiding the idea of taking over the impiety of the traitor.¹¹⁵

We find the same idea again, this time more extended, shortly afterwards. Turning to Aeschines' brothers in their probable function as supporting speakers he warns the dikasts not to give way to their pleas. As brothers, they were bound to care about Aeschines, but the dikasts were obliged to care about the laws, the whole city, and their oaths. Up to this point, Demosthenes seems to use the oath as a touchstone of loyalty to the community. As the argument continues, however, he declares the defendants' demands, if unjust, an appeal to commit perjury. This explicitness is already highly unusual.¹¹⁶ The conflict is between favour to powerful men and the dikasts' sacred obligation to keep their oaths. However, Aeschines and his brothers will not know who voted how; by contrast, the gods will see it (§239):¹¹⁷

εἰ τινῶν δεδέρηται τουτονὶ σῶζειν, πότερ' ἂν μηδὲν ἀδικῶν φαίνεται τὴν πόλιν ἢ καὶ ἀδικῶν, σκοπεῖτε. εἰ μὲν γὰρ ἂν μή, καγὼ φημι δεῖν, εἰ δ' ὅλως καὶ ὅτιοῦν, ἐπιορκεῖν δεδέρηται. οὐ γὰρ εἰ κρύβδην ἐστὶν ἡ ψήφος, λήσει τοὺς θεούς, ἀλλὰ τοῦτο καὶ πάντων

¹¹² In Andoc. 1. 31 the defendant also speaks of oaths and curses, although he means nothing more than the heliastic oath.

¹¹³ There is to some degree uncertainty about the actual formula: Dem. 24. 151 uses the word 'house', just as the winning party in the Palladium had to (Aeschin. 2. 87), whereas Andoc. 1. 31 mentions 'children'. In the Areopagus the dikasts had to curse 'house' and 'family', cf. Fränkel (1878), 461 7. 'House' is at least a familiar word in this context and the connection to one's children is in any case obvious.

¹¹⁴ Antiph. 2. 3. 9 11 deals with dikasts bringing the pollution of homicide upon themselves; Dem. 59. 109 talks of ἀσέβεια taken over by the dikasts, if they do not punish Neaera's impiety; similarly Lys. 6. 13 and Lycurg. 146; Antiph. 4. 1. 3 regards those acquitting a killer as συνασεβούντες.

¹¹⁵ That case is best exemplified in Lycurg. 146.

¹¹⁶ Compare e.g. Aeschin. 2. 1 ὃς ἐτόλμησε παρακελεύσασθαι πρὸς ἄνδρας ὁμωμοκότας τῶν ἀντιδίκων ὁμοίως ἀμφοτέρων ἀκούσεσθαι τοῦ κινδυνεύοντος φωνὴν μὴ ὑπομένειν.

¹¹⁷ The distinction between gods and the δαίμονιον might not be a strict one, since gods can also be δαίμονες (cf. Burkert 1985, 180 and ch. 3); Demosthenes might simply enlarge the group of those watching the decision of the dikasts: for one of the standard activities of δαίμονες is watching men's deeds, cf. Sfameni Gasparro (1997), 71.

ἄριστα ὁ τιθεὶς τὸν νόμον εἶδεν, ὅτι τούτων μὲν οὐδεὶς εἴσεται τὸν ἑαυτῷ κεχαρισμένον ὕμῳ, οἱ θεοὶ δὲ εἴσονται καὶ τὸ δαιμόνιον τὸν μὴ τὰ δίκαια ψηφισάμενον.

If they implore any of you to save this man, consider whether it has been shown that he committed no crime against the city or that in fact he did. If their appeal is to save him if he is innocent, then I agree that you should, but if they implore you in any case no matter what, then they are asking you to perjure yourselves. For if the ballot is secret, it will not escape the gods, a fact the lawgiver understood quite well: while none of these men will know who among you showed them favour, the gods and the divine realm will know who voted against justice.

Again Demosthenes touches upon the consequences. The reference to the gods who will deprive them of their hopes is unmistakable, and so is the danger to their children, if the fathers violate their oaths. What distinguishes this passage is the direct (or explicitly stated) involvement of the gods. Demosthenes suggests that they are indeed interested in what goes on and that they control each dikast's vote. The idea that the gods see everything is, of course, far from extraordinary,¹¹⁸ and even the danger of alienating them by casting an unjust vote is paralleled.¹¹⁹ The connection with the heliastic oath, however, and the idea (or explicit warning) that the gods will put an end to the good hopes of those dikasts who prefer to do a favour to Aeschines' brothers is unique.

Demosthenes thus presses his point about the oath. It is not entirely clear what he aims at by this intimidation. It is certainly more than just the normal appeal to the responsibility of the individual dikast who might take his obligation to vote for the better case lightly in favour of good entertainment in court.¹²⁰ Part of an explanation might be the tactic of the defence of bullying the dikasts ahead of the trial (§1, with reference to the oath), though this was probably not uncommon.¹²¹ The board of defendants could also be a reason for this device: it consisted of Aeschines' family, who were now established members of the Athenian elite, and of Eubulus, a politician of such authority and high reputation that he might have secured a share of the votes by his mere presence. Demosthenes cannot afford to attack Eubulus, so he has to adduce oracles (§297) and object that Eubulus did not speak in the courts in trials where he was under greater obligations to the defendants (§290). The dikasts' inclination to give in to the influence of Aeschines' brothers is countered by the warning against perjury. The insistence on the dikasts' obligations and oaths is a defence against their prestige and the weight of their statements. The support of prominent figures in public life was particularly weighty because this trial dealt with political actions,

¹¹⁸ Eur. *Bacch.* 393–4, in oratory Lycurg. 94, 146, Dem. 59. 126, cf. Dover (1974), 257–8.

¹¹⁹ Lys. 6. 53. The other trials in which the dikasts are warned of the danger of an acquittal (cf. n. 114) are religious in nature or the prosecutor has included a strong accusation of impiety in his speech.

¹²⁰ Cronin (1936), 126: 'the frequent appeal to the dicastic oath was mainly used to make the judge feel individually responsible'. That might be right in general, but hardly suffices to explain the outstandingly strong references in this speech.

¹²¹ Cf. Dem. 21. 4.

not with a non-political incident (like the one against Midias). The heliastic oath and the appeal to the uncompromising rule of law might work best against those opponents whose authority might be regarded as strong enough to equal that of the laws.

Conclusion

In the passages that deal with Aeschines' religious actions he is not presented as a great offender against the gods. He is never said to have violated their realm or deserve conviction for his conduct towards them. Instead, his actions demonstrate that he has left the community of the Athenians. His connection with and participation in his mother's rites shows him as socially inadequate for Athenian politics and as pursuing a cult in contradiction to Athenian customs. The Athenians have shown their negative attitude towards such activity and expressed their belief that it is damaging to the state. His change of allegiance is illustrated by his sharing libations and sacrifices with the Athenian arch-enemy, while he prevents a festival from taking place according to tradition and leaves Delphi, a place of Athenian worship, to the enemy. By this rejection of the Athenian community, Aeschines shows clearly where he belongs. He has joined the enemy and acts solely in his own interest. Religious activity happens within a community and is thus an expression of social affiliation. So when Aeschines performs rites with or in the interest of Philip, it is an indication of treason. Piety and patriotism supplement each other, but – as Demosthenes presents it – not in the sense that the gods, if worshipped, are pleased, but that the political community coincides with the religious one.¹²² The aspect of performance in the realm of religion is decisive for him. Loyalty to the state is shown by conformance to and advancement of the state cult, while the gods themselves are not mentioned. Aeschines is thus totally excluded from the Athenian community. The same is done in a less insistent and serious way to the supporting speakers from his family.

The one instance in which Aeschines really seems to be in conflict with the gods is overshadowed by the motif of the gods' intention of saving Athens. The context of the trial, especially the factors adverse to Aeschines, are interpreted as indications of divine intervention and help for Athens. So their motive for intervening is not impiety directed against themselves but political activity against the city that is dear to them. Demosthenes neither points at the connection between piety and patriotism nor describes the gods' action, whether in its nature as revenge against Aeschines or in the details of how it works. In addition the passage can again be attributed a defensive function, as a way of pre-empting

¹²² Dover (1974), 250–1 overestimates the connection in this point: there is no indication that Demosthenes here aims at this kind of exploitation; of course, a link between piety and patriotism is easy to point out, but it is not always there, cf. above, p. 61.

Aeschines' attack on Demosthenes for violating sacred norms by prosecuting a man he has dined and sacrificed with.

If there is a threat to Athens from Aeschines, it is a political one. He favours the cause of the enemy and helps in the humiliation of the city. This 'fact' is also exploited in connection with the heliastic oath. The dikasts have taken this oath 'for the benefit of the state'. Demosthenes uses this phrase not just to stress the importance of the oath for political stability and upholding the laws.¹²³ The dikasts are encouraged to vote for what is best for Athens in the realm of foreign policy (cf. §132). The oath is thus a means of pushing the dikasts to vote against the defendant who has weakened the state. The political aspect is, however, not as dominant in connection with the heliastic oath as it is with Aeschines' actions. In the religious aspect, in turn, the focus is on the personal responsibility of the individual dikast. Demosthenes again shows no negative consequences from the divine sphere to the state as a whole, but only to the dikast and his family. Just as the gods' influence in favour of Athens (if there is one, indeed) affects the dikasts, so they are the ones carrying the burden of possible perjury. The dikasts are not asked to avert the impious and polluted creature from the borders of the city and from the places where citizens intermix. The guilt of Aeschines is not said to be transferred to them, if they acquit him. Instead, the risk they run in religious terms is that of perjuring themselves and causing the destruction of their family. The menace is thus much more concrete and frightening.

Religion can be used to emphasize the seriousness and solemnity of an issue.¹²⁴ But its main function in this speech is as the realm in which Aeschines' treason manifests itself, and where religion and politics coincide. Demosthenes' portrait of Aeschines is that of a politician betraying his home state and acting deliberately against it. However, Demosthenes leaves out nearly the whole range of opportunities for connecting treason and impiety: he does not quote the ephebic oath, he does not describe how Aeschines lets down the *πόλις* gods, and so on. Nor does he use the gods to justify his policies. To show how Demosthenes avoids the category of *εὐσέβεια* one last glimpse at a point raised in Demosthenes' and Aeschines' speeches should suffice: Aeschines having sung the paean states that this was to honour the god and that he thus did a pious act. Then he asks (2. 163):

¹²³ That is a more frequent tendency in the interpretation of the oath, e.g. Aeschin. 3. 6, Dem. 18. 121, 24. 90, Din. 1. 84 6, Lycurg. 79; this might, however, be due to the number of trials concerned with illegal decrees and laws and other domestic matters.

¹²⁴ The decree in which Arthmios is declared a traitor because he brought money from the Persians to the Peloponnese (§§271 8) is a good example for the way in which religion is used to heighten the significance of an issue. Demosthenes counters the possible objection that the law is placed at some random place (and does therefore not express a particularly significant attitude): it has been set up not just on the Acropolis, which is entirely sacred, but by the statue of Athena, which commemorates the victory over the Persians.

ἔπειτα ἐγὼ μὲν διὰ ταῦτα ἀνηλεὲς τις εἰμι ἄνθρωπος, σὺ δὲ εὐσεβὴς ὁ τῶν ὁμοσπόνδων καὶ συσσίτων κατήγορος;

So this makes me a man without pity, while you are a man of piety, when you bring charges against men who have shared your libations and your food?

As seen, Demosthenes anticipates the accusation. In his answer the religious act is again an expression of loyalty to the state or to individuals (§191):

πότεροι οὖν τοὺς ἄλας παρέβαινον καὶ τὰς σπονδάς, Αἰσχίνη, οἱ προδιδόντες καὶ οἱ παραπρεσβεύοντες καὶ οἱ δωροδοκοῦντες, ἢ οἱ κατηγοροῦντες; οἱ ἀδικοῦντες δηλονότι τὰς ὅλης γε τῆς πατρίδος σπονδάς, ὥσπερ σὺ, οὐ μόνον τὰς ἰδίας.

So who violated the salt and the libations, Aeschines? The traitors, dishonest envoys, and bribe takers, or those who indicted them? Clearly the guilty have, like you, violated the libations of the entire country, not only their own.

He is not interested in a defiled Aeschines, but in the traitor. *ἀσέβεια* occurs only when Demosthenes reproduces other people's words.¹²⁵ In this speech it does not seem to form part of his active vocabulary.

¹²⁵ *ἀσέβεια* used by Aeschines §§21, 73, by the people §132; *εὐσέβεια* §§70, 212, 343 (always in connection with the heliastic oath).

3

On the Crown (Or. 18)

THE time between the negotiations leading to the Peace of Philocrates and the battle of Chaeroneia, a few years before and after the *Parapresbeia* speech, is generally regarded as the best-documented period in Athenian history. For the rest of the 330s we do not fall back into the dark ages, but we know considerably less about the factions and political groups in Athens.¹ The rise of Lycurgus is one of the most important events during that time, but it is still disputed, for example, whether his policy was based on an expressly anti-Macedonian stance or followed a different principle.² On the whole, one can say that most of the time it would have been audacious to declare hostility towards the Macedonian kings openly. Only in times of crisis in Macedonia, such as after Philip's death or during the Spartan revolt under Agis, do we hear of appeals to resist the hegemonial power.³ However, the old divisions within Athens can still be felt. Hyperides, for example, who had prosecuted Philocrates, is opposed to the friends of the late Eubulus in the late 330s.⁴ The most famous instance of an old rivalry that continues into that period, of course, is that between Demosthenes and Aeschines.

In the trial on the crown proposed for Demosthenes by Ctesiphon (formally a *γραφὴ παρανόμων*, a public trial about the illegality of a decree), the opponents use every possible allegation to denigrate one another. In the centre of the debate, however, is the question of Demosthenes' responsibility for Athens' defeat and loss of power. The speeches reveal that the Athenian public seems to have been inconsistent in its dealings with Demosthenes. On the one hand, he can describe himself as the ideal statesman who has always been backed by the people. On the other hand, Aeschines can blame him as the one responsible for everything bad that happened to the city. He goes so far as to call Demosthenes the impersonated

¹ The term is used in the meaning outlined by Strauss (1986), 17–31 (cf. Rhodes 1978), not denoting a formal political party or the like. Some new light is shed on Athenian affairs at the time by the fragments of Hyperides' *Against Diondas* found in the Archimedes Papyrus and published as Carey *et al.* (2008).

² Sawada (1996), 74–8 and Wirth (1999), 44–5 probably go too far in totally denying Lycurgus' reservations against the Macedonians against most earlier scholars, e.g. Pickard-Cambridge (1914), 428–9, Burke (1977), 335, cf. also Ch. 5.

³ Engels (1989), 176 points out that only in these crises did the attitude towards the Macedonian rule have an influence on the constellation of power within Athenian politics.

⁴ Hyp. XXIII F 104–6, cf. Engels (1989), 187–8.

evil spirit (ἀλιτήριος) of Greece, followed by a personal demon and an evil fortune (τύχη) that has wrecked the city (Aeschin. 3. 157–8). In the first part of this chapter, I shall show that Demosthenes took this allegation, which was common propaganda and not just brought forward by Aeschines on this single occasion, seriously. He answered it by replacing his opponent's concept of τύχη as something divine and personal by one more suitable to his argumentation and removing almost all of the purely religious content of the former. In the second part, I shall once more deal with Demosthenes' description of Aeschines' 'ritual activity' in his mother's mystery cult, which he had already talked about in *On the False Embassy*. The vilification of Aeschines in this passage will be shown to fit into the context of Demosthenes' defence against attacks on his τύχη and to be consistent with the use of religion as analysed in the preceding chapters on Demosthenes' forensic speeches.

Demosthenes in Defence of Himself

Even after the final defeat at Chaeroneia Demosthenes could refer to the general acceptance of his policy by the Athenians.⁵ They had expressed their approval of his actions several times after the battle. First of all, he rightly emphasizes that in the year of the defeat the people chose him to deliver the funeral oration on the war dead, although there were candidates who had no responsibility for the death of citizen soldiers.⁶ The fact that the Athenians did not surrender him when Alexander requested the extradition of the leading politicians after the Theban revolt in 335⁷ can also be seen as evidence of the Athenians' loyalty to their (former) leader and an approval of his policy. In addition they showed that they still trusted him by electing him, among other offices, supervisor of the repair of the city wall in 336.⁸ The official reason Ctesiphon gave when he proposed a crown was not that Demosthenes had spent his own money for the reconstruction of the walls, but 'because he continually speaks and does what is best for the people' (Aeschin. 3. 49). This formulation in an official text shows that it was still possible to laud Demosthenes for everything he had done as a politician – which apparently includes the war with Philip and the alliance with Thebes. Finally, it is likely that the trial about this crown was resumed under pressure from Demosthenes. This means he believed his position to be so strong that he estimated his

⁵ Cf. e.g. Pickard-Cambridge (1914), 397–400.

⁶ Dem. 18. 285–8. However, there seems to have been a tendency to have a politician deliver the speech who had advocated the respective war: Pericles after the Samian War and the first year of the Peloponnesian War, Hyperides after the Lamian War.

⁷ Arr. *Anab.* 1. 10. 6, Plut. *Dem.* 23. 4–6.

⁸ Superintendent of the reconstruction of the walls: Aeschin. 3. 14, 31, Dem. 18. 113; according to Aeschin. 3. 27, Demosthenes himself proposed the reconstruction of the walls (but cf. below, nn. 32, 34). He was also member of the board supervising the theoric fund (Aeschin. 3. 24, Dem. 18. 113) and officer for the public purchase of corn (Dem. 18. 248).

chances of winning the trial to be high.⁹ By contrast, we have plenty of evidence that his political enemies did not stop working against him, blaming him for the loss of independence, and engaging in character assassination.

One very general slander is reported from Demades who spoke of Demosthenes' policies as 'the cause of all evil; for after it the war happened.'¹⁰ The fact that Aristotle names Demades as the one who made such statements should not suggest that this allegation was made only by him. Aeschines, for example, repeats similar objections against his opponent again and again.¹¹ Plutarch does not say how often prosecution of Demosthenes was launched after Chaeroneia, but hints at a repeated effort from his opponents (Plut. *Dem.* 21. 1):

οἱ μὲν ἀντιπολιτευόμενοι ῥήτορες ἐπεμβαίνοντες τῷ Δημοσθένει κατεσκεύαζον εὐθύνas καὶ γραφαῖς ἐπ' αὐτόν.¹²

His political opponents charged Demosthenes: they attacked his conduct in office and filed public suits against him.

It is not clear what sorts of *γραφαί* were initiated against Demosthenes; the procedures against accounts were obviously merely political trials attacking Demosthenes' conduct and achievements in office. One possible explanation of the *γραφαί* is that people prosecuted him for an offence directly related to the battle of Chaeroneia, namely that he had cast away his shield and left the battle line. For this, too, seems to have been a standard objection against him.¹³ Demosthenes was acquitted in all trials (Dem. 18. 250); however, if the allegations were wrong, Demosthenes was entitled to sue the slanderers. The fact that he apparently did not do so shows that he was indeed a controversial figure, that he did not have the public on his side unanimously.

Both allegations, the purely political one and the accusation of cowardice, could assume a religious dimension. In the latter case, opponents seem to have exploited the fact that 'to good luck' (*ἀγαθῇ τύχῃ*) was inscribed on Demosthenes' shield (Plut. *Dem.* 20. 2). By the time of Chaeroneia Good Luck, or Agathe Tyche, had just become a publicly recognized deity or at least was about to become one.¹⁴ Pytheas mocks Demosthenes for, or accuses him of, not being

⁹ Cf. Sawada (1996), 69–71, who offers a more convincing explanation for the reopening of the trial than e.g. Harris (1995), 141–2, Bosworth (1988), 213.

¹⁰ Arist. *Rh.* 2. 24, 1401^b32–4.

¹¹ e.g. Aeschin. 3. 147, 226, 253.

¹² Note the present participle and the imperfect. Cf. Dem. 18. 249–50 (also mentioning *εἰσαγγελία*) and if Demosthenes is the speaker 25. 36–7.

¹³ e.g. Aeschin. 3. 175, Din. 1. 71, Plut. *Dem.* 14. 2 (Demetrios), 20. 2 (Pytheas). Gell. 17. 21. 31 (which is, however, identical with Men. *Sent.* 56). One's military record is a common motif in gossip exploited in forensic speeches, cf. the list in Hunter (1994), 118.

¹⁴ *IG* ii². 333 mentions her as a goddess to whom the Athenians sacrifice in 335/4, cf. Hamdorf (1964), 97, Parker (1996), 231–2, Sfameni Gasparro (1997), 86; the statue at the Prytaneion (Ael. *VH* 9. 39, by Praxiteles?) might have been one of hers, cf. Allègre (1889), 165–8, Tracy (1994), 243, but the exact date is unclear. Cf. also Ch. 5. She appears as a goddess on a private monument in the first half of the 4th c. (*IG* ii². 4564 and *LIMC* s.v. *Tychē* 2), an example of the fact that 'state cults lag behind individual and popular beliefs' (Giannopoulou 2001, 2). For the cult elsewhere cf. Herzog-Hauser (1948), 1678–82. For a (nearly) divine status of *τύχη* in the 4th c. see e.g. Xen. *An.* 5. 2. 24–5; the *Rhetorica ad Alexandrum* (2. 28, 1425^a22) calls divine benevolence *εὐτυχία*.

ashamed before this inscription, just as one would be ashamed before a deity. We can only guess to what extent the religious notion played a role in Pytheas' slander, but the formulation means 'to be ashamed before Agathe Tyche' rather than 'to be ashamed of the inscription' (that is its incongruence with the outcome).¹⁵ It thus suggests that the allusion to the divine nature of ἀγαθὴ τύχη was intentional. So we are justified in assuming that the remark could be taken at least by part of the Athenians as denigration of Demosthenes in religious terms.¹⁶

More serious than the inscription on the shield was probably the fact that Chaeroneia had challenged the Athenians' established belief that their luck was always good. This basic belief had the status of a dogma,¹⁷ and we shall see that Demosthenes is still upholding it. However, the loss of power as a consequence of his policy made it easy for his enemies to blame him for the change of the city's good luck. The evidence suggests that this was a common strategy of his opponents in political debate in the courts and in the assembly although it has hitherto been underestimated. This sort of propaganda as taken up by Aeschines is a key to the understanding of Demosthenes' religious argumentation (or its avoidance) in the speech *On the Crown*.

Aeschines is not content with just blaming Demosthenes' policy and addressing him as the politician who is guilty of leading the city into wars and disadvantageous alliances. His overall tactic is to show 'that the responsibility for the city's survival lies with the gods and the individuals who have treated the city's situation with humanity and moderation, while the responsibility for all our misfortunes (ἀτυχήματα) lies with Demosthenes.'¹⁸ This summary of why Demosthenes does not deserve to be crowned contains the same statement as the passage of Demades quoted above except that it also refers to the gods. It already contains the core of the religious accusations, even though Aeschines does not yet explain how this neat division comes about. Demosthenes is described as the antagonist of the gods, but not yet openly as impious. His connection with the city's τύχη is alluded to, but the instances of misfortune (ἀτυχήματα) are not necessarily to be perceived as part of a religious category. A fuller account of Aeschines' religious argumentation will be given later, but it is necessary to present the main points of the accusation now so that Demosthenes' reaction can be understood.

¹⁵ οὐδὲ τὴν ἐπιγραφὴν τῆς ἀσπίδος ὡς ἔλεγε Πυθέας αἰσχυνθεὶς, cf. e.g. Antiph. 1. 27, Eur. *Ion* 1074–8. It cannot mean that Demosthenes was ashamed of the inscription, cf. K. G. i. 298–9 with n. 6 and i. 439 with n. 10.

¹⁶ The religious notion would also fit into the little we know about Pytheas' life: that he was sent by the Athenians to offer sacrifices at Delphi and that he opposed divine honours to Alexander (Dem. *Ep.* 3. 30, Plut. *Mor.* 804 B).

¹⁷ Cf. Chs. 2 and 6.

¹⁸ Aeschin. 3. 57; already in *On the False Embassy* Aeschines seems to hint at such an idea (2. 158, cf. below, Ch. 5), but he does not accuse Demosthenes of having caused any disaster; however, he uses the quote of Hesiod as a warning.

In the context of the Amphissa affair, the turning point of the conflict with Philip, Aeschines is more explicit.¹⁹ At a session of the amphictyons in 340/39,²⁰ the Locrians had, according to Aeschines, accused the Athenians of attaching shields to the new temple in Delphi before its consecration. Aeschines, who was present as one of the inferior delegates (πυλάγοροι) of the Athens, obtained permission to address the council. He attacked Amphissa, a city in Locris, in turn for the tilling of sacred land in the Cirrhaean plain. His speech was so successful that the enraged council decided to raze the buildings on the sacred plain. When the Amphissians resisted, the amphictyony declared a Sacred War, but the effort remained futile until Philip was elected commander of the enterprise. However, instead of dealing with Amphissa, Philip exploited the free entry to Central Greece that was granted him to march against Thebes. This new war ended with the battle of Chaeroneia.

Both orators treat this affair extensively in their speeches – with a very different perspective on the events. Aeschines justifies his treatment of the matter by saying that Demosthenes will use the topic to put the blame for Philip entering Central Greece on him (Aeschin. 3. 128). However, he does not confine himself to defending his role, but launches into counter-allegations on a religious level, arguing that Demosthenes' defilement influences the city's fate. He alleges that Demosthenes had accepted bribes for conniving at the Locrians' use of the sacred land and the adjoining harbour. Aeschines calls the harbour 'accursed' and consequently describes the bribes as polluted. So Demosthenes became polluted himself. In consequence, whatever or whoever has come into contact with him is entangled in misfortune.²¹

At the end of the narrative of this crisis of Hellas, Aeschines asks the dikasts to imagine the Thebans after their city had been razed, not so angry at their enemies as at those responsible for the events (Aeschin. 3. 157):

καὶ νομίσαθ' ὅρᾱν... ὀργιζομένους οὐ τοῖς τιμωρουμένοις, ἀλλὰ τοῖς τούτων αἰτίοις, ἐπισκῆπτοντας μηδενὶ τρόπῳ τὸν τῆς Ἑλλάδος ἀλιτῆριον στεφανοῦν, ἀλλὰ καὶ τὸν δαίμονα καὶ τὴν τύχην τὴν συμπαρακολουθοῦσαν τῷ ἀνθρώπῳ φυλάξασθαι.

Imagine that you can see [the Thebans...] angry not at the people who were taking revenge on them but at the men responsible for these events, solemnly instructing you under no circumstances to crown the evil spirit of Greece but to be on your guard against the *daimon* and the bad *tyche* that dogs the man's footsteps.

Thus Demosthenes is twice²² said to have had more than just the political responsibility for the decline of Athens. His fate is like a curse that threatens Athens and causes its downfall. He carries it with him and 'infects' everyone and

¹⁹ Aeschin. 3. 106–31; cf. below, Ch. 5.

²⁰ On the date of this session cf. Sánchez (2001), 228.

²¹ Aeschin. 3. 114; 'misfortune' is the non-religious Greek term *συμφοραί*.

²² In addition, Aeschines quotes Hesiod again: Aeschin. 3. 135 – Hes. *Op.* 240–5, in particular 241–2, where the word *ἀλιτράινω* foreshadows the designation as *ἀλιτῆριος* in §157.

every matter he touches on so that it spreads just as he has been 'infected' by the polluted money. It is thus not so much his activity, but his mere involvement in the affairs of Athens that leads to her failure. In a number of passages Aeschines points to impious behaviour of Demosthenes that one might think could have caused the stain of his fate and thus made him Athens' evil spirit.²³ There is also a link between impiety and the evil fate that surrounds Demosthenes.²⁴ Aeschines' attacks, though, are not likely to be a one-off; the motif of Demosthenes being polluted is not his invention for this particular occasion. Instead, we have to imagine Aeschines drawing from a wider pool of political invective current at the time. Demosthenes had to defend himself against allegations that he brought bad luck from the time of Chaeroneia until at least the Harpalus trial. A certain degree of continuity in the accusations against Demosthenes after Chaeroneia is to be assumed. No rival politician is likely to have missed the chance to mention Demosthenes' commitment to an alliance that led to Athens' loss of independence. We get a glimpse of this when Demosthenes reports that after the people had decided to let him deliver the funeral speech on the war dead (that is in 338), Aeschines and Pythocles came forward 'attacking me with the same reproaches that you are using now' (§285). This reference to Aeschines' accusations is made only about ten paragraphs after he has finished his treatment of the *τύχη* question. Hence it is natural to assume that this issue was at least part of them.

Another extant speech drawing heavily on the evil *δαίμων* pursuing Demosthenes and haunting the Athenians is that of Dinarchus in the Harpalus affair. He goes even further than Aeschines, saying that the Athenians should kill 'the evil spirit (*ἀλιτῆριος*) of Hellas' and ban the corpse from burial in Athenian ground (Din. 1. 77). The association with polluted people and objects that were cast out to avoid pollution is clear.²⁵ In the same paragraph, Dinarchus states that Demosthenes has cast Athens into misfortune. We are far from the mainly Hellenistic concept of Tyche, the blind goddess that in a random process causes the rise and fall of a man or a city.²⁶ Similarly, it was not the unforeseeable *τύχη* that hit Athens,²⁷ but an (allegedly) obvious factor that brought about continued bad fate. Demosthenes seems to be the instrument by which the *τύχη* that is attached to him prevents anyone from doing good to the city.²⁸ Once Dinarchus suggests a connection between moral deficiencies (broken promises, but probably

²³ e.g. Aeschin. 3. 77, 152, 176.

²⁴ The connection is particularly prominent in Aeschin. 3. 132–3; the Phocians' downfall is owed to their opposition against Apollo, Philip's victory in the Sacred War to his help to the sanctuary.

²⁵ In Dem. 21. 105 the same word *ἐξόριστος* is used for the (alleged) killer banned from Athens; Worthington (1992), 246 interprets the passage correctly, but fails to realize how strongly the idea is presented in this case: in general, calling someone *ἀλιτῆριος* may have been 'a common expression in the *topoi* of oratorical invective for use against an opponent', but the way Dinarchus puts it here is much stronger than Demosthenes does (cf. Ch. 2 with n. 79).

²⁶ Quotations, mainly from Menander, in Vogt-Spira (1992), 39–42, 51–2, cf. also Pind. *Ol.* 12. 6, *Soph. Ant.* 1158.

²⁷ That is the *ἄδελος τύχη* of New Comedy, cf. Vogt-Spira (1992), 37–42.

²⁸ Din. 1. 31–3, 41.

also the bribery Demosthenes is accused of) and the misfortune (*ἀτυχία*) which together cause the city to be unfortunate (*κακοδαιμονεῖν*).²⁹ He even has Aristarchus, whom Demosthenes had induced to kill Nicodemus and who had to go into exile, think of Demosthenes as his *δαίμων* (Din. 1. 30).

Thus the core of the allegations is identical with those of Aeschines. Demosthenes is inextricably connected with an evil fate which he disseminates in Athens and which brings catastrophe on her. I would suggest that we can catch here a glimpse of wider contemporary political propaganda.³⁰ Aeschines and Dinarchus use the same source: the critical attitudes of public opinion (which is itself influenced by the orators/politicians).³¹ Not only do we find that image of Demosthenes in those two speeches delivered against him, but Demosthenes even acted in a way that reveals his awareness of such an image: Aeschines reports that after Chaeroneia the Athenians would not tolerate Demosthenes' name on decrees.³² This is probably rhetorical exaggeration, but apparently Demosthenes avoided proposing decrees by himself. At least, that is the version Plutarch relates: after Chaeroneia, Demosthenes did not make proposals, but put his friends' names on them. He did so because he feared his *δαίμων* and his *τύχη*.³³ No matter whether Demosthenes really had this fear or Plutarch only attributes it to him, it is probably a fact that Demosthenes acted very carefully and that somehow his supposed 'fate' was a reason for this.³⁴ Even though the political situation changed again after Philip's death and Demosthenes became confident enough to come back to the fore, that does not mean that his enemies had to stop their denigration. The situation is thus probably that Demosthenes was able to be active in politics, but that he faced attacks concerning the decline of Athens during his career. These attacks could take the form of religious denigration and

²⁹ Din. 1. 91 2 'If the city must reap the rewards of Demosthenes' dishonesty and misfortune so that we are even more possessed by an evil spirit I am at a loss to describe it any other way then we should accept our current circumstances. But if we have any feeling for our country and hate criminals and those who take bribes, and want our fortune to change and improve, you must not, Athenians, be swayed by the entreaties of this polluted magician...'

³⁰ It has been suggested (Wankel 1976, 1106) that Dinarchus in fact takes Aeschines' speech as a model in this point. However, what could induce an orator to borrow material from a speech that turned out to be an utter failure? He would have had to hope for a better reception of the same arguments in 324 than in 330, now that Demosthenes was convicted of bribery.

³¹ Cf. Worthington (1992), 177.

³² Aeschin. 3. 159; instead, they 'assigned that task to Nausicles'. We do not have a decree by Nausicles, and the only extant decree by Demosthenes is from 340/39, cf. Lambert (2001), 62 (but cf. also below, n. 34).

³³ Plut. *Dem.* 21. 3 *ἐξοικονίζομενος τὸν ἴδιον δαίμονα*. The definition of *ἐξοικονίζομαι* in LSJ s.v. ('avoid as ill-omened') is unsuitable here; 'regard as ill-omened' fits both occurrences (this one and Plut. *Mor.* 289 B).

³⁴ There is no reason why we should think of Aeschines as Plutarch's source in this passage. The differences are considerable. It is nevertheless problematic that Demosthenes speaks of his own proposals in 18. 248 and that Din. 1. 78–80 confirms this (cf. also Aeschin. 3. 27, talking about a decree from May/June 337). The 'initial period' in Aeschines (3. 159) is unspecific and makes a contrast with the time after Philip's death. Hyp. 1. 28 would probably be very helpful if the text were complete; for possible interpretations cf. Whitehead (2000), 446–50.

depict Demosthenes as possessed by an evil fate as a consequence of pollution. It is hard to say how many Athenians would believe an argument like this. However, the doctrine that the gods would always save the city might have been so deep-rooted that people would regard the explanation of a δαίμων as credible after the defeat of Chaeroneia and the destruction of Thebes.³⁵ Demosthenes' connection with so many set-backs for the city might have sufficed to make the claim of his enemies look plausible.³⁶

The τύχη Motif in *On the Crown*

So Demosthenes had to address the issue of τύχη in his speech not just because of Aeschines' particular accusations.³⁷ It was part of his account of his political activity to refute the allegations that his policy and his fate were responsible for Athens' failure. In any case, the allegations were obviously so serious that Demosthenes had to reply to them. Later in the speech he addresses the issue of τύχη extensively. But indirectly he deals with the problems of pollution and the alleged enmity of the gods from the start. The first sentence runs like this (Dem. 18. 1 2):³⁸

Πρώτον μὲν, ὦ ἄνδρες Ἀθηναῖοι, τοῖς θεοῖς εὐχόμεαι πᾶσι καὶ πάσαις, ὅσῃν εὐνοίαν ἔχων ἐγὼ διατελῶ τῇ τε πόλει καὶ πᾶσιν ὑμῖν, τοσαύτην ὑπάρξει μοι παρ' ὑμῶν εἰς τούτων τὸν ἀγῶνα, ἐπεὶ ὅπερ ἔστι μάλισθ' ὑπὲρ ὑμῶν καὶ τῆς ὑμετέρας εὐσεβείας τε καὶ δόξης, τοῦτο παραστήσαι τοὺς θεοὺς ὑμῖν, μὴ τὸν ἀντίδικον σύμβουλον ποιήσασθαι περὶ τοῦ πῶς ἀκούειν ὑμᾶς ἐμοῦ δεῖ (σχέτλιον γὰρ ἂν εἶη τοῦτό γε), ἀλλὰ τοὺς νόμους καὶ τὸν ὄρκον, ἐν ᾧ πρὸς ἅπασιν τοῖς ἄλλοις δικαίοις καὶ τοῦτο γέγραπται, τὸ ὁμοίως ἀμφοῖν ἀκροάσασθαι.

First of all, men of Athens, I pray to all the gods and goddesses that during this trial you have as much goodwill towards me as I have always had for the city and all of you, and further – a matter of the greatest importance to you, to your piety, and to your reputation – that the god inspire you not to accept my opponent's advice on how you should listen to me, for that would be cruel, and instead to heed the laws and your oath, for beyond all your other obligations, you have specifically sworn to listen to both sides equally.

³⁵ Cf. below, n. 46 for the popular belief that everything good came from the gods and everything bad from a δαίμων.

³⁶ Parker (1983), 268 interprets this connection as a form of the old conception of the link between the ruler and the fate of his people.

³⁷ The newly discovered fragments of Hyperides' *Against Diondas* confirm that Athenian politicians were struggling for the power of interpretation of the term τύχη. The speaker excuses himself and his allies for defeat at Chaeroneia saying that it was in fact τύχη that caused the outcome of the battle: Carey *et al.* (2008), 2. 5, 7, 6. 2.

³⁸ The speech as we have it is certainly not a first draft, but was written after the delivery of the 'real' speech, cf. Intro. n. 33. To what extent it is identical with the delivered version must remain unclear, nor is it possible to say whether the (last) revision took place before or after the publication of Aeschines' speech: Wankel (1976), 51 with n. 126, Yunis (2001), 26 7.

Prayers in the proem can only be found in Lycurgus and a couple of speeches of clearly religious content.³⁹ The commentators have trouble giving good reasons for why Demosthenes included this and the other prayers (§§141, 324) in the speech. The recent commentary by Yunis presents no more than a few ideas of general nature: Demosthenes' prayer 'evokes the start of a weighty communal enterprise' and 'aims to affect the jurors' religious sentiments, which... were never detached from public business'.⁴⁰ However, under these conditions there are enough opportunities in the corpus of extant speeches for the inclusion of prayers. The rather unspecific content of this prayer and its position right at the start forbid any thorough rhetorical interpretation of the passage without knowledge of the rest of the speech. All that becomes clear is that Demosthenes urges the dikasts to stay benevolent and to listen to his argument. The situation is different for the second prayer. It is placed directly ahead of Demosthenes' treatment of the Amphissa affair (§141).

The reason why he adds it at this position has already been discovered by Henri Weil, and it is related to Aeschines' argumentation as presented above:⁴¹ Aeschines had depicted himself and his conduct at the amphictyony as a model of piety. By contrast, Demosthenes was the one who had allegedly accepted polluted money for securing the use of the accursed harbour.⁴² Demosthenes now all but dismisses the religious aspects of the Amphissa affair. On the other hand, he invokes all the gods in the preceding prayer, but the Pythian Apollo is the only one whose name he mentions. The imbalance between Aeschines' heavy exploitation of religion and its almost complete lack in Demosthenes (with the exception of the prayer) suggests that the latter is trying to cover the otherwise missing element in his argumentation. He does not just want to enhance the solemnity of his account and to blur inconsistencies, but to display strong confidence in his cause towards the god of Delphi. He suggests that there is no reason why the Delphic Apollo should not answer his prayer. For someone responsive to the power of oaths and prayers, this 'statement' may thus be enough in itself to prove Demosthenes' innocence and the falsehood of Aeschines' allegations in this context.

To go back to the first prayer, a similar function can be inferred for it by analogy. Demosthenes' main point in the prayer is the dikasts' benevolence

³⁹ Wankel (1976), 106 lists the relevant fragments. Those from forensic speeches originate from trials on religious matters.

⁴⁰ Yunis (2001), 105. Wankel, loc. cit. states in honest helplessness: 'Was D. bewog, nicht nur für den Anfang seiner Verteidigungsrede eine so ungewöhnliche Form wie das Gebet zu wählen, sondern dazu dieses Gebet am Ende des Proömiums zu wiederholen, an einer wichtigen Stelle der Apologie im Verlauf der Rede ein zweites Gebet einzulegen (§141) und die Rede auch mit einem Gebet zu beschließen, läßt sich kaum erklären.'

⁴¹ Weil (1883), 491 'Eschine s'était posé en défenseur de la religion et avait attribué les malheurs d'Athènes à la politique impie de Démosthène.'

⁴² Fox (1880), 150 suggests that by his solemn prayer Demosthenes tried to assert the truthfulness of his otherwise improbable account. However, this seems to me to be a less important function of the prayer. Again, hardly any speech would be without such oaths if this were the case.

because this is what he relies on in order to be able to arrange his speech according to his tactics without major protest.⁴³ Aeschines had asked the dikasts to protest if Demosthenes did not follow his order of arguments (Aeschin. 3. 202–6). Hence Demosthenes warns them not to take his opponent as their counsellor when listening to his speech (§2). A second reason, however, is that he has to answer all the accusations and insults or slanderous charges Aeschines has put forward (§§3, 7) and public opinion held about him. In particular, he rejects the insinuation of his being flawed in a religious sense by displaying his ‘good conscience’ in a prayer. As in the case of Amphissa, Demosthenes avoids answering the allegation that he is polluted etc. directly, but counters Aeschines’ malicious remarks (and the political propaganda against him in general) by an implicit proof of his religiosity and religious faultlessness. In this way, he also attacks Aeschines’ claim of piety, by referring to the impartial hearing as a duty of the dikasts’ *εὐσέβεια*, which Aeschines asks them to neglect. By this indirect reply to any prejudices the dikasts may have formed in advance or during Aeschines’ speech he wins time to deal with different matters first before he comes to the points Aeschines had claimed to be central to the case and his most dangerous allegations: the legal issues and the role of *τύχη*.

In this way Demosthenes wins time to prepare for his treatment of the *τύχη* problem. Before he addresses it expressly, he intersperses maxims and commonplaces in his speech to make his interpretation more easily acceptable for his audience.⁴⁴ For example, he mentions expeditions the Athenians undertook in 394 in favour of Corinth and Thebes, although these cities had been their enemies just ten years before. He emphasizes that they owed it to their fame and honour to march out (§97):⁴⁵

πέρας μὲν γὰρ ἅπανιν ἀνθρώποις ἐστὶ τοῦ βίου θάνατος, καὶ ἐν οἰκίσκῳ τις αὐτὸν καθεύδων τηρῇ· δεῖ δὲ τοὺς ἀγαθοὺς ἄνδρας ἐγχειρεῖν μὲν ἅπανιν αἰεὶ τοῖς καλοῖς, τὴν ἀγαθὴν προβαλλομένους ἐλπίδα, φέρειν δ’ ἂν ὁ θεὸς διδῶ γενναίως.

Since all men find the limit of life in death – even one who has shut himself in a closet and watches – good men must always venture all noble acts with good hope as their shield and worthily endure whatever the god gives them.

In using this topic Demosthenes establishes the idea that the gods alone decide about the outcome of military enterprises. It has been held that in contemporary popular belief the normal conception was one of the gods sending only what was good, whereas for bad things a *δαίμων* was usually held responsible.⁴⁶ A passage

⁴³ Fox (1880), 53–4. For the unwillingness of audiences to listen to defendants after appropriate preparation by the prosecution cf. e.g. Dem. 45. 6 and more generally Bers (1985), 9.

⁴⁴ It is remarkable how closely some of them resemble the commonplaces in Demosthenes’ *Epitaphios* (60. 19–22), which can be an indication either of its authenticity or spuriousness; on this question cf. Intro. n. 12.

⁴⁵ This too is of course a preparation for his justification of the resistance against Philip, cf. Yunis (2001), 161.

⁴⁶ Mikalson (1983), 19, 60, the exception being divine ‘strafgerechtigkeit’ (Meuss 1889, 466–7).

like this shows that this belief was at least not fixed; probably it was even a form of euphemism or propaganda to reassure the audience.⁴⁷ Instead, Demosthenes suggests an interpretation whereby lots (good and bad alike) are distributed by the god himself, which also has its parallels.⁴⁸ Owing to the similarity of the situations it will not be too hard for him to transfer the idea to the battle of Chaeroneia.

When he comes to that point, he uses similar maxims about a god (§§193, 200), a *δαίμων* (§192), or *τύχη* (§194), who/which determined the outcome of the battle.⁴⁹ The tendency is the same as in the previous passage: fate is unpredictable and unchangeable,⁵⁰ and Demosthenes has no connection with it. The concept of *τύχη* presented here is thus different from Aeschines' more 'personal' fate or *δαίμων* which is influenced by the piety or impiety of one's actions.⁵¹ It is closer to a mere statement of what happens.⁵² The aspect of inevitable chance is emphasized by the simile of the shipowner who is not to blame if his well-equipped ship happens to be wrecked by a storm (§194). Everything in this simile is conventional.⁵³ So the audience will find it difficult to resist its suggestive force. Moreover, Demosthenes can blur Aeschines' terminology.

The main idea of the passage is, however, that Demosthenes not only is not to blame for the defeat (as he was not the general), but was even responsible that fate did not strike harder: without the alliance with Thebes the battle would have taken place on Attic soil and the danger would have been much greater. Demosthenes does not state it in such terms, but implies that he constricted the faculties of *τύχη* in this way. For the time being, Demosthenes simply passes over Aeschines' allegations of his being doomed and accepts responsibility only for political action: no word about the *ἀλιτῆριος*, the evil spirit, who, as Aeschines suggests, damages his cause by his mere involvement. Instead, he dissociates himself from any intervention of fate, ascribing all the positive events to himself and blaming everything negative on fate.⁵⁴ In a way, however, Demosthenes continues his refutation of the *ἀλιτῆριος* argument. What Aeschines blamed on the evil spirit following Demosthenes is now implicitly refuted in that Demosthenes presents himself as totally separated from any influence of *τύχη* and

⁴⁷ At least, it can be called 'contextually determined' (Parker 1997, 155), cf. also Carey (1999), 373 4.

⁴⁸ Cf. Wankel (1976), 908 9. His parallels with gods instead of *τύχη* come mainly from the archaic period, but see §193 *ἐν γὰρ τῷ θεῷ*, §200 and Menander fr. 114* Körte Thierfelder (though this is a quotation from Pindar; the fragment is announced as *PCG Dis Exapaton* 7 in the *comparatio numerorum* of *PCG* vi/2).

⁴⁹ Mikalson (1983), 60 notes that the three 'seem to merge into one force'.

⁵⁰ Cf. Wankel (1976), 910 on *εἴμαρτο*.

⁵¹ Cf. the 'specialtyche einzelner personen' or 'personaltyche' in Meuss 1889, 473; Antiphanes *PCG* 257 and Philemon *PCG* 9 indicate such an idea around the time of Demosthenes.

⁵² A meaning that emerges as common in Athenian New Comedy, cf. Vogt-Spira (1992), 23 4.

⁵³ Cf. Wooten (1978), Wankel (1976), 915.

⁵⁴ He is thus applying exactly the same tactics he criticizes in Aeschines' prosecution (§212). This was obviously a common *topos*, cf. Fraenkel (1961).

depicts the will of the *δαίμων* as a force working against, not through, himself. All this is done without any reference to Aeschines' argument.

It is obvious from this passage, but even more from the one on Amphissa, that the Athenians had no clear single concept of fate. The term was so vague that it could be used in different meanings with no one or only few noticing.⁵⁵ Just as the separation of good and evil conferred on men by gods and *δαίμονες* respectively is not consistent in all sources, the level on which and the way in which fate acts are unclear: Aeschines seems to speak only of the personal level, of the polluted individual who carries his *δαίμων* with him and 'infects' other individuals until the defilement accumulates to the damage of the whole city.⁵⁶ By contrast, Demosthenes can neglect this kind of fate for the time being and mention only the fate that hits the whole city at once. In a later passage (§§253 5) he distinguishes several levels of *τύχη*, and the *δαίμων* has nothing of the notion of a personal evil spirit, but denotes an impersonal, indefinable divine force that determines the fate of the whole world.⁵⁷

The passage forms part of the actual refutation of Aeschines' *τύχη* argument (§§252 96), which is separated from the account of his policy.⁵⁸ At this point, Demosthenes has not only explained why the Athenians were right to take a risk in withstanding Philip as long as possible. He has also shown them why it was the only appropriate way of acting. By this argument, combined with the idea of the unpredictability and inevitability of fate, he is absolved.

Demosthenes starts with a commonplace not yet used in the speech, which again emphasizes the changeability and unpredictability of one's fate: that no one knows whether his good luck (*τύχη*) is going to last until the night (§252). Criticizing the 'stupidity and rancour' Aeschines shows by holding Demosthenes' *τύχη* against him, he makes clear that he is talking about his *τύχη* in the sense of personal lot. But in the following paragraphs he introduces further *τύχαι* of the city and of the whole of mankind (§§253 4):

ἐγὼ τὴν τῆς πόλεως τύχην ἀγαθὴν ἡγοῦμαι, καὶ ταῦθ' ὁρῶ καὶ τὸν Δία τὸν Δωδωναῖον ὑμῖν μαντενόμενον, τὴν μέντοι τῶν πάντων ἀνθρώπων, ἣ νῦν ἐπέχει, χαλεπὴν καὶ δεινὴν τίς γὰρ Ἑλλήνων ἢ τίς βαρβάρων οὐ πολλῶν κακῶν ἐν τῷ παρόντι πεπεύραται; τὸ μὲν τοῖνυν προελέσθαι τὰ κάλλιστα καὶ τὸ τῶν οἰηθέντων Ἑλλήνων, εἰ προοῖντο ἡμᾶς, ἐν εὐδαιμονίᾳ διάξειν αὐτῶν ἄμεινον πράττειν, τῆς ἀγαθῆς τύχης τῆς πόλεως εἶναι τίθημι τὸ δὲ προσκροῦσαι καὶ μὴ πάνθ' ὥς ἡβουλόμεθ' ἡμῖν συμβῆναι, τῆς τῶν ἄλλων ἀνθρώπων τύχης τὸ ἐπιβάλλον ἐφ' ἡμᾶς μέρος μετεπιλφεῖναι νομίζω τὴν πόλιν.

⁵⁵ For the difference between the short-term 'as-it-happens perspective' and the long-scale 'in-retrospect perspective' and their varying religious significance, see Giannopoulou (2001), 225; cf. also Eur. *Cyc.* 606 7.

⁵⁶ Aeschines, too, uses medical language, calling the consequences for Athens 'incurable disasters' (3. 114). On the connection between medical language and pollution cf. Parker (1983), 57, Hankinson (1995), 37 46.

⁵⁷ Fox (1880), 192.

⁵⁸ Fox (1880), 189 90 has realized that the whole passage §§252 96 is a reply to the two 'threads', i.e. leitmotifs, of Aeschines' speech: the *δαίμων* following Demosthenes and his oratory.

As I see it, our city enjoys good fortune, and I note that the oracle of Zeus at Dodona told you this too. But mankind in general, as matters currently stand, is ruled by harsh, grim fortune. Which Greeks, which barbarians do not at the moment confront an abundance of troubles? I count it as part of the city's good fortune that we chose the noblest course of action and enjoy better circumstances than those Greeks who expect to secure a happy future by casting us off. Though the city has absorbed a blow, and we have failed to achieve all our aims, yet I view this as the share of mankind's general fortune that descends on us.

When he speaks about *τύχη* on a city level, his refutation of Aeschines is still implicit; for this good fortune would not be possible if he had spread pollution and conferred catastrophe on the city. The reason for his assumption of good fortune is a comparison with the universal level. The *τύχη* of the rest of Greece and the world is much worse than Athens' because they were hit much harder. Aeschines' assertion that the catastrophe was caused by Demosthenes and his involvement in Athenian affairs is thus implicitly proved to be wrong. The allusion to an oracle is another defensive device in relation to the religious aspects of the allegations: Zeus of Dodona disproves by his response that the city was affected by any evil spirit brought upon it by Demosthenes.

Different 'layers' of *τύχη* are nothing extraordinary. The concept of the *τύχη* of a *πόλις*, especially Athens, has been mentioned, and traces of a common fate of mankind can already be seen in the epic cycle.⁵⁹ In these cases, fate as a goddess or something divine is not distinguishable from the mere course of events. In a purely religious sense we find similar ideas.⁶⁰

Whilst in earlier passages he mentioned a *δαίμων* or god, Demosthenes now presents *τύχη* as a state of luck without any emphasis on her divine nature, not indicating any influence of the divine on the course of events. By mentioning her he reduces the word to the meaning of the city's and the world's present condition. He excludes the ideas of a divine agent behind the events which Aeschines had put in the foreground. What is distinctive in Demosthenes' speech is the juxtaposition of strata of *τύχη* and the way they interfere with each other. He plays off the *πόλις'* fortune against the universal fortune with the result that, despite the disaster of the world as a whole, the city's *τύχη* can still be regarded as good.

After he has established the idea that the city is well off, he turns to the third stratum of *τύχη*, which alone Aeschines had considered, that of the individual.

⁵⁹ *τύχη* of a polis Alcman *PMGF* 64 (?), Pind. fr. 39 (?), Dem. 19. 255-6 and n. 60; of an individual Archilochus *IE*² 16, the spurious Dem. 42. 21 (written after Dem. 18), cf. also e.g. Hom. *Il.* 22. 209-12 (without the word *τύχη*); common fate of mankind *Cypria* *PEG* 1 (without the word *τύχη*). For other instances of *τύχη* in Demosthenes cf. Vallozza (1980: 1). The concept of an individual *τύχη* like that which Demosthenes is going to treat in the following might be as old as Greek poetry.

⁶⁰ *Τύχαι* of cities are worshipped from the 6th c. onwards; the earliest instance in Smyrna: Paus. 4. 30. 6, cf. Hamdorf (1964), 37. For a private votive offering by Xenophon see *LIMC* s.v. 11 (Paus. 9. 16. 1-2). On the difficulties in distinguishing the goddess from her manifestation cf. Pötscher (1988), 71, 82.

Demosthenes completely separates the individual from the state and the personal condition from everything that befalls the state. He thus precludes any applicability of Aeschines' theory about his own bad influence on the public sphere. He can do this by again reducing the concept of *τύχη* to its outward aspects, that is to what is visible from one's course of life and the standing resulting from it. However, Aeschines never tried to deny Demosthenes' financial prosperity. It is just because it is most convenient for Demosthenes to display his personal circumstances (in particular in comparison with Aeschines) that he highlights this meaning of *τύχη*. Just once does he casually refer to Aeschines' argumentation, in a sentence that shows how much he has distorted it (§255):

τὴν δ' ἰδίαν τύχην τὴν ἐμὴν καὶ τὴν ἐνὸς ἡμῶν ἐκάστου ἐν τοῖς ἰδίοις ἐξετάζειν δίκαιον εἶναι νομίζω. ἐγὼ μὲν οὕτως περὶ τῆς τύχης ἀξιῶ, ὀρθῶς καὶ δικαίως, ὡς ἐμαντῶ δοκῶ, νομίζω δὲ καὶ ὑμῖν ὁ δὲ τὴν ἰδίαν τύχην τὴν ἐμὴν τῆς κοινῆς τῆς πόλεως κυριωτέραν εἶναί φησι, τὴν μικρὰν καὶ φαύλην τῆς ἀγαθῆς καὶ μεγάλης.

Now in my opinion, it is fair to examine the personal fortune allotted to me as well as that allotted to each of us with regard to our personal circumstances. That is how I judge fortune, and that seems to me and to you too, I believe, correct and fair. Yet Aeschines asserts that the fortune allotted to me personally is more powerful than the common fortune of the city, that is, the small and mean is more powerful than the honourable and great.

In the way it is cited, Aeschines' remark seems exaggerated since the idea of 'infection' remains unmentioned. The fate of an individual does not dominate that of a city. Yet Aeschines had not based his argument on a *τύχη* of cities or a 'conflict' between different *τύχαι*. One sees how Demosthenes can avoid the whole concept of spreading a *δαίμων* and evil fate that contaminates the city.⁶¹

Thus the section deals with another point at the same time: apart from the *τύχη* issue it contains the usual character assassination, the attack on one's status and life. Aeschines had treated these two points separately because of his different concept of *τύχη*. He had made the attack, for example, on Demosthenes' allegedly Scythian origin part of a portrait of him as an antidemocrat (Aeschin. 3. 171–6). The idea that his defilement causes disaster had no connection with these points. Since Demosthenes applies the concept of *τύχη* in the sense of one's destiny and fortune (in a double meaning),⁶² the social standing of the opponents serves as an indicator for good or bad destiny. He exploits *τύχη* in this way not just because he can thus reply to Aeschines' argument. His social standing is his strength, or rather Aeschines' weakness, because he notoriously spent his youth in a way that could be regarded as unworthy of a politician.⁶³

⁶¹ Cf. Wankel (1976), 1116, who says the individual *τύχη* had been 'entdämonisiert . . . und auf das persönliche Lebensschicksal verschoben'.

⁶² Cf. Goodwin (1901), 177 'Though Aeschines refers only to his general *fortune*, Demosthenes chooses to speak chiefly of his *fortunes* in life, which he compares with those of his opponent.'

⁶³ Cf. Lane Fox (1994), 138–40 on Aeschines' attempts to hide this part of his life and on how he escaped it.

So what follows is the detailed comparison of the circumstances of the opponents' lives which constitute the *τύχη* in Demosthenes' sense. He now presents the usual invective. The points are mostly designed to expose the low social standing of Aeschines' family. It seems that wealth and prestige are the components that decide whether a fate is to be called good or bad, depending on one's status at birth (and thus merely social criteria) not the piety of one's actions, as was suggested by Aeschines when he said that Philip succeeded and the Phocians failed because of the role each of them had in the Sacred War (3. 132–3). Accordingly, Demosthenes presents the invective against Aeschines as a biography and a description of his *τύχη*. He demonstrates how contemptible Aeschines' breeding is. A special case is his participation in his mother's rites. There, too, it is no religious offence that is exploited as responsible for a miserable existence, but the cult and the cult practice are just social criteria that show the value of personal fate to be measurable by outward criteria.⁶⁴

Finally, when he has presented Aeschines' life in the light of his affiliation to a class and contrasted it with his own fate, he seems for the first time really to reply to the core of Aeschines' argument (§§270–1). He comes back to the idea of the universal *τύχη* and his claim that the whole world was suffering:

εἰ μὲν γὰρ ἔχεις, Αἰσχίνη, τῶν ὑπὸ τοῦτον τὸν ἥλιον εἰπεῖν ἀνθρώπων ὅστις ἀθῶος τῆς Φιλίππου πρότερον καὶ νῦν τῆς Αἰεξάνδρου δυναστείας γέγονεν, ἢ τῶν Ἑλλήνων ἢ τῶν βαρβάρων, ἔστω, συγχωρῶ τὴν ἐμὴν εἴτε τύχην εἴτε δυστυχίαν ὀνομάζειν βούλει πάντων αἰτίαν γεγενῆσθαι. εἰ δὲ καὶ τῶν μηδεπώποτ' ἰδόντων ἐμὲ μηδὲ φωνῇν ἀκηκοότων ἐμοῦ πολλοὶ πολλὰ καὶ δεινὰ πεπόνθασι... πόσῳ δικαιότερον καὶ ἀληθέστερον τὴν ἀπάντων, ὡς εἰσικεν, ἀνθρώπων τύχην κοινὴν καὶ φορὰν τινα πραγμάτων χαλεπὴν καὶ οὐχ οἷαν ἔδει τούτων αἰτίαν ἡγεῖσθαι.

If you, Aeschines, can point to a single man under the sun, either Greek or barbarian, who has escaped unscathed the domination imposed first by Philip, now by Alexander, so be it, I admit that my fortune or ill fortune, however you choose to name it, is responsible for everything. But if many who have never seen me and never heard my voice also suffered terrible, extensive damage, . . . how much more honest and truthful is it to attribute these outcomes to the common fortune of virtually all mankind and a grievous rush of events that should not have been.

This time, Demosthenes admits that, in principle, the fate of one person can influence that of others. The way he expresses the condition can be understood as an allusion to the idea of pollution. Seeing and hearing someone defiled are described in tragedy as ways in which pollution is transmitted. Thoas in Euripides' *Iphigeneia in Tauris*, for example, is told to cover his eyes so as to avoid seeing stained murderers and receiving pollution himself.⁶⁵ However, by using the

⁶⁴ Cf. below, pp. 113–15.

⁶⁵ Eur. *IT* 1218. The text is corrupt, but the word *παλαμναῖος* fits the context with the word *καθαρόν* in 1216. Further examples are given in Bond (1981), 359. Cf. also below, n. 80.

words for seeing and hearing Demosthenes avoids explicit terminology of defilement. He draws on unspecific terms that need not evoke that idea, but may equally refer to his political activity (for example of ‘hearing the voice’ of the orator), because even the hypothetical admission of his enemies’ allegations that he was polluted could have been damaging to his cause. So those who are sensitive to the pollution argument might interpret his explanation in this way, the rest might take it as just another refusal to accept responsibility for Philip’s victory.⁶⁶

In the rest of the passage, Demosthenes does not take up Aeschines’ argument on pollution again. Instead, he recurs to legal terminology on responsibility (§§274–5):

παρὰ μὲν τοίνυν τοῖς ἄλλοις ἔγωγ’ ὁρῶ πᾶσιν ἀνθρώποις διωρισμένα καὶ τεταγμένα πῶς τὰ τοιαῦτα. ἀδικεῖ τις ἐκὼν ὀργὴν καὶ τιμωρίαν κατὰ τούτου. ἐξήμαρτέ τις ἄκων συγγνώμην ἀντὶ τῆς τιμωρίας τούτου... Αἰσχίνης τοίνυν τοσοῦτον ὑπερβέβληκεν ἅπαντας ἀνθρώπους ὁμότητι καὶ συκοφαντίᾳ, ὥστε καὶ ὦν αὐτὸς ὡς ἀτυχημάτων ἐμέμνητο, καὶ ταῦτ’ ἐμοῦ κατηγορεῖ.

I notice that among all the rest of mankind the following definitions and rules apply. A man commits a crime intentionally: he meets with anger and punishment. A man makes a mistake unintentionally: he is pardoned, not punished... Yet Aeschines so exceeds all mankind in malicious cruelty that he blames me for things that he himself has described as bad fortune.

With the probably old⁶⁷ distinction of crime, mistake, and bad fortune (*ἀτυχήματα*) he exploits the connotation that something happened without intention or could not even be counted as a mistake. Thus, he can refer to a particular established meaning of ‘bad fortune’. This enables him to distort Aeschines’ argument by his very reference to the prosecution speech⁶⁸ and to hide the fact that Aeschines did confer a notion of responsibility on the *ἀτυχήματα* of Demosthenes.

Demosthenes avoids open religious language when he is explicitly responding to Aeschines’ accusations. The term *δαίμων*, for example, does not occur in the passage that allegedly deals with Aeschines’ attack on Demosthenes’ bad luck.⁶⁹ Terms with a potential religious meaning, such as *τύχη*, are used in a non-religious sense. Moreover, other than in trite phrases on the influence of gods/a *δαίμων*/*τύχη* on the course of events (without further examples from history)

⁶⁶ Yunis (2001), 261 realizes that this passage is a response ‘to a key feature of A.’s argument on D.’s pernicious *tyche*’, but not that this is the only time he really applies Aeschines’ categories. Wankel (1976) has nothing significant to say to this point, although he stresses the connotations of pollution in §159 (cf. below).

⁶⁷ Wendland (1904), 542 n. 1, already Weil (1883), 546.

⁶⁸ The reference is to the word *ἀτυχήματα* in §57 in the introduction to the historic narrative.

⁶⁹ The words *εὐδαιμονία* and *εὐδαιμονίζω* occur in §254 and §260, but they have no obvious connection to Aeschines’ argument.

Demosthenes eschews religious ideas, and where he touches upon them, he disguises them by ambiguous allusions. The listener is thus not forced to see a religious concept in Demosthenes' argument, but needs a certain predisposition to perceive it as such.

Demosthenes pretends to address Aeschines' accusations, but in fact he does not refute, but just transforms them: either he reduces them to a non-religious meaning as with *τύχη*, which loses the whole notion of a result of impiety (leaving the prayers the only religious elements), or he completely distorts the underlying idea. Thus the *δαίμων*, the evil spirit, is totally separated from an individual, an independent distributor of fate, the same for everyone (§303).

The Fourth Sacred War

The same tactic of excluding or downplaying religious content is applied in an even more obvious way in the case of Amphissa. Demosthenes concentrates a good deal of religious language, only to push this aspect away as much as possible after the introduction: Aeschines, he says, will not be able to 'wash himself free' from the accusations;⁷⁰ the opponent is called *μαρὸς*; and the assertion of the truth of his allegations is clad in the form of a prayer (as has been mentioned above). So Demosthenes heightens the religious significance of this introduction just before he denies any religious influence on the matter at issue. Again the religious language is strongest in that part of the speech in which Demosthenes turns back his opponent's allegations.

The prayer is unusual enough to make him give an explanation for it: Aeschines might seem incapable or too unimportant to do anything of such enormous importance as paving the way to Greece for Philip (§142). Apparently, the audience would have expected only the documentary evidence of which Demosthenes speaks to be presented. The prayer also allows him to dismiss the religious aspects of the events at the Pylaea without open disregard for religious affairs as such. In order to describe Aeschines as an agent of Philip, he ascribes all activity to the *πυλάγορος*, leaving hardly any room for the higher-ranking *ἱερομνήμονες*, the official delegates of the cities, and their chairman Cottyphus. In this way the character of the procedure as one following the laws of the amphictyony of Delphi as a religious organization is to a large part concealed.

Demosthenes claims that the accusation of the Amphissians that the Athenians had hung up shields before the consecration of the temple was an invention by Aeschines (§150). By doing this, he denies that Aeschines was justified in demanding the right to speak before the amphictyony. Although his proof is a sophism,⁷¹ his statement need not be wrong. Yet there must have been

⁷⁰ §140; the term *ἐκνίπτεσθαι* is regularly used for cleansing of spilt blood, e.g. (in a context of ritual purity) Eur. *IT* 1224, cf. Dem. fr. I C 15, Pl. *Ep.* 8, 352 c 3–4, Pollux 1. 33.

⁷¹ Harris (1995), 128, Sánchez (2001), 231–2.

a reason why Aeschines as a mere *πυλάγορος* was allowed to enter the assembly of *ἱερομνήμονες*.⁷² Apart from that, it is not implausible that the Amphissians brought forward the allegation concerning the shields. They were backed by the Thebans,⁷³ and a pinprick against the arch-enemy of Thebes (in a matter which involved Theban humiliation) would be in accordance with this alliance.

It is undisputed that Aeschines' defence and counteraccusation at Delphi was forceful and effective. It led to a total reversal of the situation. Demosthenes agrees and confirms that the speech was of religious nature, but it is exactly this religious content for which he derides it (§149):

ὥς δὲ τὸ τῆς πόλεως ἀξίωμα λαβὼν ἀφίκετο εἰς τοὺς Ἀμφικτύονας, πάντα τ' ἄλλ' ἄφεις καὶ παριδὼν ἐπέραιεν ἐφ' οἷς ἐμισθώθη, καὶ λόγους εὐπροσώπους καὶ μύθους, ὅθεν ἡ Κιρραία χώρα καθιερώθη, συνθεῖς καὶ διεξελλθὼν ἀνθρώπους ἀπείρους λόγων καὶ τὸ μέλλον οὐ προορωμένους, τοὺς ἱερομνήμονας, πείθει ψηφίσασθαι περιελθεῖν τὴν χώραν...

He arrived at the amphictyons' meeting draped in the prestige of the city and straightway cast aside and neglected everything else to execute the task for which he had been hired: he composed fine sounding arguments together with myths about the consecration of the Cirrhaean plain and delivered them before delegates who had no experience of rhetoric and no insight in what was coming. Thus he persuaded them to vote to go around the territory.

He insinuates that for Aeschines all the talk about the religious issue had no real importance. The only reason for it was the gullibility of the amphictyons. They were fooled by the agent of Philip, who did all this only for political reasons. Denying Aeschines' honesty in his religious argumentation before the amphictyons (and again before the present jury), Demosthenes partly defends himself from Aeschines' accusations. For, if the use of the 'sacred harbour' had no real religious significance (or only for the inexperienced, somewhat rustic amphictyons), the bribes he was allegedly paid in this context cannot have had the 'contagious' effect Aeschines ascribes to them.⁷⁴

⁷² Lefèvre (1998), 210–12 states that the exclusion of the *πυλάγοροι* (Aeschin. 3. 117) is a deviation from other evidence on the decision process (cf. Diod. Sic. 16. 23. 3), but that the procedures of the amphictyony could vary in this way. Since Aeschines does not gain an advantage from telling why he alone was admitted to the assembly, he is not likely to lie in this point.

⁷³ Sánchez (2001), 242, cf. the absence of the Thebans from the extraordinary Pylaea (Aeschin. 3. 128; Londey 1990, 258). However, the accusation of the Amphissians would probably have resulted in a fine against Athens and not have required a reply on the scale Aeschines gives it, cf. Aeschin. 3. 116, Londey (1990), 242, Sánchez (2001), 236.

⁷⁴ It is clear from various documents that Demosthenes (presumably consciously) understates the importance of the sacredness of the Cirrhaean plain, which was indeed partly sacred and had been a matter of disputes earlier as well as in Hellenistic times, cf. *CID* 1. 10, Isoc. 14. 31, *CID* 4. 119E. B28–31. However, Aeschines too seems to apply some 'exagération rhétorique': the Cirrhaean plain had not lain idle and some fortifications had been built which were not temporary, so the use of the land was no exceptional transgression of sacred laws, cf. Rousset (2002), 191.

In the following events, Aeschines is again given a role more important than he actually had;⁷⁵ and in turn the official representatives of the amphictyony are marginalized. In fact, the procedure followed exactly the rules of the amphictyony stated in a law from 380.⁷⁶ Aeschines is very likely to give the correct version of how the amphictyons inspected the Cirrhaean plain all together with Cottyphus giving the directives when they had been repelled.⁷⁷ Only in Demosthenes' account does Aeschines lead the group.

According to this version the aim of starting a war was to give Philip the opportunity to invade Central Greece. Demosthenes does not waste a word on the religious character of the whole affair and the course of events. Aeschines' religious argumentation is asserted to be a mere trick.⁷⁸ Demosthenes can do all this and need not fear that the dikasts may find him irreverent towards the Delphic Apollo because he has invoked religious authority and claimed veracity in his introductory prayer.

At the end of the passage, in a summarizing slander (§159), he uses the word *ἀλιτῆριος* for Aeschines and all other alleged traitors. The comparison to Aeschines' speech, however, where the idea of an evil spirit is spelled out in full, makes clear that the original religious meaning is not very prominent in this context. The *ἀλιτῆριοι* in the present case are described as people who intentionally harm their fatherland and provide the seed of all the evils befalling it; another term applied to them is *πονηροί*, a word of abuse with no religious connotation. So, as he 'returns the compliment' to Aeschines, Demosthenes deflects the sense of the word *ἀλιτῆριος* to its frequent use as a more 'colorless term of abuse'.⁷⁹ Moreover, Demosthenes alludes to the idea that one must not look at polluted people like them (as in §270, cf. above).⁸⁰ Again, he avoids the standard terminology of the diffusion of pollution.⁸¹ Those listeners who want to perceive a religious undertone can interpret the passage in this way, the rest may just hear the usual abuse.

⁷⁵ Demosthenes says (§151) that Aeschines 'took the lead' (*ὑφήγησας*).

⁷⁶ Sánchez (2001), 233, *CID* 1. 10. 16 19; cf. Dem. 18. 151 *περιμέναι*.

⁷⁷ Aeschin. 3. 123 4.

⁷⁸ His speech is said to have provoked the menace of an amphictyonic war against Attica (§143). Demosthenes pretends to have foreseen Philip's future intervention and his march on Athens instead of against Amphissa, cf. Goodwin (1901), 106. Not only is this a daring claim, it is also strange that he should call Philip's attack on Elateia part of the amphictyonic war. The specification of the war as an amphictyonic one does not imply a warning of a sacred war: Philip's campaign leading to Chaeroneia is never called this nor would such an interpretation support Demosthenes' line of defence. 'Amphictyonic' here denotes no more than an alliance superior to the force of Athens. So Demosthenes again diminishes the religious potential of the matter.

⁷⁹ Yunis (2001), 201 (both quotations), cf. Wankel (1976), 826 and above, Ch. 1.

⁸⁰ §159 *ὃν ὅπως ποτ' οὐκ εὐθὺς ἰδόντες ἀπεστράφητε θαυμάζω*.

⁸¹ Wankel (1976), 827 8 by contrast emphasizes the idea of pollution so that the passage seems to him even stronger than Aeschines' corresponding one. He does not take into account that Demosthenes describes Aeschines' guilt in non-religious terms.

Aeschines and the ‘Sabazius’ Rites

As we have seen above, Demosthenes twisted the sense of the word *τύχη* to a designation of the circumstances of one’s life. In this way it was easy for him to combine the motif with the attack on the opponent’s origin that was part of the usual invective in the courts. With Aeschines’ citizenship rights, Demosthenes could obviously hardly find fault; with regard to the position of his family in the social structure of Athenian society, by contrast, Aeschines was more vulnerable. The fact that Demosthenes exploits again, as in the *Parapresbeia* speech, the fact that Aeschines’ mother was involved in some obscure mystery cult indicates that he could here really hit a weak spot in his opponent’s biography. In the earlier speech Demosthenes had been the prosecutor and thus had had to be aware that Aeschines could refute false allegations. This may be one reason why he only alluded to the cult, focusing on its being on the margin of society. In the speech *On the Crown*, the general tone of both speakers is much more aggressive. Moreover, Demosthenes spoke last, so he was free to say whatever he thought effective with the audience. For this reason, he could give a detailed description of what Aeschines allegedly did in these mysteries (§§259–60):

ἀνὴρ δὲ γενόμενος τῇ μητρὶ τελοῦσθαι τὰς βίβλους ἀνεγίγνωσκες καὶ πᾶλλα συνεσκευωροῦ, τὴν μὲν νύκτα νεβρίζων καὶ κρατηρίζων καὶ καθαίρων τοὺς τελουμένους καὶ ἀπομάττων τῷ πηλῷ καὶ τοῖς πιτύροις, καὶ ἀνιστὰς ἀπὸ τοῦ καθαρμοῦ κελεύων λέγειν “ἔφυγον κακόν, εὖρον ἄμεινον,” ἐπὶ τῷ μηδένα πώποτε τηλικούτ’ ὀλολύξαι σεμννόμενος (καὶ ἔγωγε νομίζω μὴ γὰρ οἷεσθ’ αὐτὸν φθέγγεσθαι μὲν οὕτω μέγα, ὀλολύξειν δ’ οὐχ ὑπέρλαμπρον), ἐν δὲ ταῖς ἡμέραις τοὺς καλοὺς θιάσους ἄγων διὰ τῶν ὁδῶν, τοὺς ἐστεφανωμένους τῷ μαράθῳ καὶ τῇ λεύκῃ, τοὺς ὄφεις τοὺς παρείας θλίβων καὶ ὑπὲρ τῆς κεφαλῆς αἰωρῶν, καὶ βοῶν “εὐοὶ σαβοὶ”, καὶ ἐπορχούμενος “Υῆς Ἀττης Ἀττης Υῆς”, ἔξαρχος καὶ προηγμένων καὶ κιστοφόρων καὶ λικνοφόρος καὶ τοιαῦτα ὑπὸ τῶν γραδίων προσαγορευόμενος, μισθὸν λαμβάνων τούτων ἔνθρυπτα καὶ στρεπτοὺς καὶ νεήλατα, ἐφ’ οἷς τίς οὐκ ἂν ὥς ἀληθῶς αὐτὸν εὐδαιμονίσειε καὶ τὴν αὐτοῦ τύχην;

Grown to manhood, you used to read aloud from books for your mother as she conducted initiation rites, and you colluded with her in other ways. By night you clothed the initiates, in fawnskins, prepared them the crater, purified them, and scrubbed them down with clay and bran. You raised them up after purification and bade them utter ‘I’ve fled evil; better things I’ve found,’ proud of yourself because no one ever shrieked so loud. I quite agree. Don’t believe that one who talks so loud does not also shriek piercingly. By day you led brilliant bands of revelling worshippers through the streets. They wore crowns of fennel and white poplar as you clutched four lined snakes⁸² and swung them over your head. You would shout ‘Euhoi Saboi’ and dance to the beat of ‘Hyes Attes Attes Hyes’ as the old hags would hail you as leader and guide and bearer of the casket and bearer of the winnow, and so on. You were paid with soppy bread,

⁸² On the identification with the four-lined or Bulgarian Ratsnake cf. Bodson (1981), 76 7.

twisted rolls, and flat cakes. Enjoying all this, who would not regard himself and his lot in life as truly fortunate?

That Demosthenes' account is highly derogatory has generally been accepted. It is clear from the context as well as from obviously satirical elements. Nevertheless, many scholars have believed that they can identify the cult and use Demosthenes' account for the reconstruction of its ritual. In this section I would like to show that we should not take the accuracy of the account for granted. Demosthenes exploits comic techniques to ridicule Aeschines, probably blurring elements of various cults and exposing his opponent to the audience's laughter.⁸³ The passage forms part of his account of Aeschines' earlier life and the demonstration of how despicable his origins, and thus his *τύχη*, are. In this account too it is not so much the religious elements that are emphasized, but its main function is the refutation of the accusation that his own bad *τύχη* has ruined the city (by diverting the sense to a non-religious one, as seen for the rest of the speech). Demosthenes does so by the demonstration that, by contrast, Aeschines' *τύχη* is the bad and miserable one.

In the preceding passage Aeschines is said to have been his father's assistant in his school. The father's profession is likely to be a fact since it is also mentioned in the speech of 343. Aeschines' job, however, as described in *On the Crown* is that of a slave (§258): 'As a boy raised in great poverty, serving at the school alongside your father, you rubbed the ink, wiped the benches, and swept the schoolroom, fulfilling the task of a household slave, not that of a freeborn youth.'⁸⁴ Demosthenes aims at presenting Aeschines' family as desperately poor: the father has to work for his living, and the family does not possess a slave who would be of the appropriate standing for this kind of work.⁸⁵ This description in all likelihood is not accurate. Aeschines and his brothers had at least hoplite status and so the family's property should have been sufficient to afford a slave.⁸⁶ But from the bit of truth that there might be in the suggestion that Atrometus was poor, Demosthenes can ridicule Aeschines; the discrepancy between his boasting and his actual origin is too great.

In the description itself, there are a number of elements of overtly ironic or comic character. First, when Demosthenes mentions Aeschines' pride in how he can shout the ritual cry *ὀλολυγή*, he adds that Aeschines – famous for his particularly loud voice – was certainly a perfect shouter of the ritual cry (§259). Reducing the

⁸³ Cf. Fox (1880), 196 'eine wahrhaft Aristophanische Komödie' and Koster (1980), 89, who speaks of a burlesque scene.

⁸⁴ The motif of undignified occupation, often in combination with foreign or slave origin is common in oratory and comedy; a list of relevant passages is given in Süß (1910), 248–9, Dover (1974), 32–3.

⁸⁵ It might not have been very unusual that a family had no slaves (Arist. *Pol.* 1. 2, 1252^b12, 6. 8, 1323^b5–6), but at the courts speakers often suggest that this is something significant and that all dikasts own one (Lys. 5. 5, 24. 6. Dem. 45. 86), cf. Garland (1988), 60–1.

⁸⁶ Harris (1995), 26, Lane Fox (1994), 139–40, cf. Ch. 2 n. 52.

cry to the aspect of loudness (in Aeschines' alleged claim and in his comparison) Demosthenes both ridicules the cult and debases Aeschines as an absurd figure screaming senselessly and thus perverting the ritual. Moreover, the *δολυγή* is normally the task of women, so we have here an instance of Aeschines playing a female role – that is acting a role not befitting an Athenian politician.⁸⁷ A second obviously comic trait is Aeschines' holding all ritual functions by himself. He is called 'leader, guide, bearer-of-the-casket,⁸⁸ bearer-of-the-winnow, and so on' (§260) by the old women who participate in the rites.⁸⁹ It is clear that if Aeschines had had all these functions the cult would have had little qualified personnel. Probably, the women were just flattering him – in this case the exaggeration reveals the insignificance of Aeschines and the more or less random names of his functions. The flattering old women themselves act as a reminiscence of comedy, as we shall see confirmed later. In any case, it is clear that Demosthenes' treatment of Aeschines and the cult is derogatory and distorted. It is by no means certain whether the *δολυγή* was practised or whether there were any such functions in the cult at all.

This insight has not prevented the majority of scholars from using the description as evidence for the course of action in exotic⁹⁰ mysteries. Mostly the worshipped god has been identified as Sabazius.⁹¹ This ascription rests mainly on the explanation of certain elements in ancient lexicons and commentaries.⁹² It presupposes, however, the identity of Sabazius and Dionysus. This is unlikely to be true for the fourth century, as it is still not common knowledge in the third century.⁹³

The technique Demosthenes uses might best be illustrated by a crater from Ferrara.⁹⁴ On this crater we see a Dionysus-like god and a goddess making a libation. In front of them a group of revellers is dancing to the sound of flutes and a tympanon wearing a snake diadem and holding snakes which are winding

⁸⁷ For the *δολυγή* as a typically female 'activity' cf. Burkert (1985), 74, Fraenkel (1950), 296, Pulleyn (1997), 180.

⁸⁸ On the reading *κιστοφόρος* cf. below, n. 116.

⁸⁹ In mysteries (at least the respectable ones), the *λίκνον* seems to have been carried by women or boys, not by men, cf. J. Harrison (1903). Demosthenes might thus again point at the gender reversal in Glaucothea's mysteries.

⁹⁰ For the precarious use of the word 'foreign', especially in this case, cf. Parker (1996), 159. When it is used in this chapter, it means non-Greek and is not the equivalent of the word *ξενικός*.

⁹¹ Cf. Wankel (1976), 1133, Baumgarten (1998), 131, Dillon (2002), 158–60; Graf (1974), 105 (Meter and Sabazius); Yunis (2001), 254 'conflation of Dionysus and Sabazius'. However, scholars have become sceptical: Lane (1989), 2–3, Parker (1996), 159.

⁹² *Σαβοί* as the cult cry and name of the worshippers of Sabazius: Strabo, *Geogr.* 10. 3. 18, Schol. Dem. 18. 295, *ἄφεις παρείαι* in Theophr. *Char.* 16. 4, Harp. s.v. *Σαβοί*.

⁹³ Nilsson (1967–74), i. 836 realizes that the identification had not taken place in the 5th c.; Schol. Ar. *Av.* 873c shows (i. 566 n. 10) that the original identity of Dionysus and Sabazius was not common knowledge in the 3rd c., since Nymphis (or perhaps Promathidas) is reported as writing *φαίνεται γὰρ ἐξ ὧν εὐρίσκομεν συλλογιζόμενοι πολλαχόθεν ὅτι Διόνυσος καὶ Σαβάζιος εἰς ἐστὶ θεός*; cf. also Kraemer (1981), 232–3.

⁹⁴ ARV² 1052. 25 Ferrara 2897, reproductions in *CVA Ferrara*, pl. 11, Carpenter (1997) pl. 28, 29.

around their arms. Some points of divergence from the iconography of Dionysus and the similarity with features from Demosthenes' description have led some archaeologists to identify the god with Sabazius.⁹⁵ However, at the time when the vase was made (440/430), Sabazius had just been brought to Athens and was far from being acknowledged as a reputable deity. He was perceived as a stranger and a god of slaves.⁹⁶ An Attic vase depicting his cult would thus be surprising, being (in addition) unparalleled.⁹⁷ Moreover, the goddess's identification as the equally 'eastern' Cybele or Mother is not uncontroversial, either.⁹⁸ It has been argued that the enigmatic iconography cannot be satisfactorily explained and that for any attempt to recognize a specific deity in the god of the crater some inconsistencies will remain. For this reason, it is better to accept the ambiguity of the painting without looking for any final interpretation.⁹⁹ Starting from this 'solution', Thomas Carpenter goes further and tries to explain the indeterminacy of, and puzzlement created by, the painting as intentional: the picture is meant to entertain and to have a dramatic effect; it reflects 'a generic ecstatic cult' by the exploitation of motifs from the Dionysiac sphere and probably the common prejudices about exotic rites.¹⁰⁰ With this interpretation it is possible to make up for the picture's lack of clarity in meaning.

Similarly, there may be no need to try to pin down the cult Demosthenes is describing. The view that he has a particular cult in mind has no strong foundation. No element in the description allows an unambiguous connection to Sabazius. Instead, some parts might even be his own malicious inventions. If he had wanted to accuse Aeschines of taking part in the rites of Sabazius because it was forbidden or scorned the question is why he did not do so openly. Mentioning the god's name and perhaps making an aside such as the one about the priestess put to death in the earlier speech,¹⁰¹ he could have made clear

⁹⁵ Simon (1953), 84–5, Beazley in *ARV*². Parker (1996), 191 n. 142 wishes to identify the god with Attis. However, from his first secure appearance on Athenian images around 80 years later (Vermaseren 1982, no. 308 *IG* ii². 4671, from the Piraeus), this deity has a standard dress different from the one on the Ferrara crater, cf. Roller (1994), 245–6 with n. 4.

⁹⁶ Cf. his appearances in Aristophanes' comedies (*Au.* 875, *Vesp.* 9, *Lys.* 387–8, *PCG* 578), especially his expulsion in an uncertain play (*Cic. Leg.* 2. 37).

⁹⁷ The (to my knowledge) only other pictures of a god interpreted as Sabazius (L. Curtius (1928), 285, 288, from about the same time) show a completely different iconography of the god. An interpretation analogous might apply to that given for the Ferrara crater by Carpenter (1997), who claims (77) claims that there is no representation of Sabazius before Roman times.

⁹⁸ The lion on her arm could also point to Hera or nymphs, cf. Carpenter (1997), 72. Another oddity is the representation of snakes treated by maenads, an iconography that had been superseded by the handling of snakes by the Furies only, cf. Bérard and Durand (1989), 29, Carpenter (1997), 74–5. The snake diadem in Eur. *Bacch.* 101–2 is put on the head of the baby Dionysus. This is an aetiology for the snake-handling of the maenads, not for a snake diadem of Dionysus himself. It obviously has to do with the Athenian custom of putting babies in a basket with golden snakes as a symbolic protection, an appropriate act in the case of the threatened god, cf. Seaford (1996), 160.

⁹⁹ Bérard and Durand (1989), 29.

¹⁰⁰ Carpenter (1997), 79.

¹⁰¹ Dem. 19. 281, cf. pp. 66–81.

that Aeschines had committed a religious offence. If the deity had been despicable to the Athenian public, his worshipper would have been despised by the dikasts, as well.¹⁰² However, Demosthenes is not interested in depicting Aeschines' activity as something that can be taken seriously. The purpose of the passage is ridicule as can be inferred from the instances of open mockery described above. To contribute to this purpose the description cannot be too absurd, though. Realism is required to a certain extent so that the juxtaposition of realistic and grotesque elements can create the effect aimed at.

More than all that, even if Demosthenes had accurately described the rites of an existing obscure cult, how could the dikasts have known that cult? If a large part of them had been worshippers themselves, Demosthenes could not have used Aeschines' function to denigrate him. On the other hand, if none or only few of the dikasts were initiated, at least the initiation part must have been unknown to most of them.¹⁰³ So Demosthenes (himself probably no attendant of the 'Sabazian' mysteries) has to invent the course of the rites using elements familiar to his audience and suggesting a sort of suspicious cult. The 'profanation' of the mysteries is thereby in itself a humiliation to Aeschines.

As for the identification of the rites, the snakes the revellers handle, the tame four-lined snakes, seem to be associated with Sabazius as early as in the time of Theophrastus and thus of Demosthenes himself. In the *Characters*, the superstitious man is said to pray to Sabazius whenever he sees such a snake. Some centuries later, Christian authors report that in the ritual snakes slip down the worshippers' bosom.¹⁰⁴ However, one should remember the distance in time of the Christian authors and the literary form of the *Characters*. Theophrastus' work is satirical, not an accurate account:¹⁰⁵ the superstitious man may just invoke the first god at hand. If he calls on an exotic god, Theophrastus may be emphasizing his anxiety not to miss any deity. It does not mean that the snake was exclusive to the cult of Sabazius: it was certainly also sacred at least to Asclepius.¹⁰⁶ The squeezing of the harmless snake, which is thus handled in the same way as is normally done with venomous snakes by the maenads, might be a joke about the worshippers' cowardice.¹⁰⁷

¹⁰² Brown (1991), 44.

¹⁰³ Picard (1961), 133 infers from the very presentation of Demosthenes that the secrecy cannot have been very strict in the cult, a good example of how deep-rooted the conviction was that Demosthenes was to be trusted.

¹⁰⁴ Theophr. *Char.* 16. 4, Clem. Al. *Protr.* 2. 16. 2, Arn. *Adv. nat.* 5. 21. 6. If this practice had been known to Demosthenes, would he have missed the opportunity to give a scary description of it? Cf. also monument 81 in Lane (1985): a plate with Sabazius and a large number of attributes, among others a snake (from Rome, no date is given).

¹⁰⁵ Cf. Diggle (2004), 14 16.

¹⁰⁶ Ael. *NA* 8. 12. Other, more dangerous, snakes were often painted together with maenads of Dionysus and remained associated with these women even after they had become restricted to the iconography of the Furies (Eur. *Bacch.* 697 8, 768, cf. Andromachos at Galen 14. 45. 9 11 Kühn). On an association of snakes with a cult of Zeus and Kore cf. M. L. West (1983), 96 7.

¹⁰⁷ On the dangerousness of the maenads' snakes cf. Maxwell-Stuart (1971), 439; the word *θλίβων* might denote a form of handling that prevents bites, cf. Wankel (1976), 1141.

The cultic cry 'Euhoi Saboi' has long been regarded as strong evidence for the identification of Aeschines' rites with those of Sabazius. The cry itself is certainly authentic, as an almost identical form occurs in a comic fragment of the fifth century.¹⁰⁸ The difficulty lies rather in the connection with Sabazius, not established before Strabo (*Geogr.* 10. 3. 18). The first part clearly points to Dionysus; the second part might be the name of a different god, but in any case it can be linked to Dionysus.¹⁰⁹ If the above consideration is right and the syncretism of Dionysus and Sabazius postdates the fifth century (as it does), the identification of Aeschines' rite with the worship of Sabazius becomes very doubtful. Lane has shown that the late antique commentators probably depend on Strabo on this point; they write at a time when the identification is well established and 'mergers' of gods are frequent.¹¹⁰

As a preliminary conclusion we can say that we should not regard the mysteries and the revelries as part of the worship of Sabazius. The snakes may evoke associations with that god, but this connection is not certain. Instead, the ritual cry suggests that Demosthenes has also (or rather) borrowed from the Dionysiac sphere, which is separate from the cult of Sabazius.

It is in accordance with the nature of mysteries that the origin, the meaning, and the exact procedure of the rites are obscure. Moreover, the various cults show a tendency to merge so that it is hard to discern the particularities of a cult, even if we have a late description.¹¹¹ Nevertheless, in the following paragraphs the different origins of some other elements presented in Demosthenes' account will be traced.

The core of the rites is probably genuinely Dionysiac: the fawnskin, for example, is typical for the maenads on Attic vases. There is no other cult known to use this prop.¹¹² Equally, the preparation of the crater by its natural association with wine might have suggested ties to Dionysus.¹¹³ The only other clear instances of that custom occur in two inscriptions, probably both from Ionia, in the context of a Corybantic cult;¹¹⁴ the Corybantes originally form the fellowship of Cybele, but are also attested in a Dionysiac context in Athens.¹¹⁵ The religious function of *προηγμένων*, which Aeschines exercises, is not attested in any cult and the word is so unspecific that it need not be a regular title. The

¹⁰⁸ Eupolis *PCG* 94 has 'Euai Sabai'. Both forms, 'Euai' and 'Euhoi', are well attested (beside other variants); the difference may be negligible.

¹⁰⁹ The god Sabos is badly attested (*Orph. Hym.* 49. 2 from about the 3rd c. AD, Hesych. s.v. *Σαβάζιος*), but the connection to Dionysus might be confirmed by a tombstone *AE* 1953, no. 243 (first published in Egger 1950), cf. Kraemer (1981), 230 1.

¹¹⁰ (1989), 3, cf. also Kraemer (1981), 231 3.

¹¹¹ The syncretism already seems to have progressed far in Eur. *TrGF* 472.

¹¹² On the fawnskin cf. Eur. *Bacch.* 111, Lex. Pat. 154. 17 18 (though it might not be reliable because of its age).

¹¹³ Cf. Yunis (2001), 254 and the Lenaeon vases.

¹¹⁴ *Ieryth.* 206 (with supplements in *SEG* 47. 1628) and Herrmann (2002), 158 9; cf. Wankel (1979) and Graf (1985), 321.

¹¹⁵ Eur. *Bacch.* 125 9, Pl. *Phdr.* 228 B, 234 D, cf. Graf (1985), 323 n. 38, Parker (1996), 194.

others mentioned, however, show a connection with Dionysiac rites, though not an exclusive one.¹¹⁶ Finally, the cult cries apparently invoke Dionysus.

The Orphic elements which the initiation part of the rites contains also belong in the Dionysiac context.¹¹⁷ The reading of sacred books suggests a link to Orphic cults and so does the mud used in the ritual cleansing of the initiates.¹¹⁸ Another Orphic element in the description of the procession during daytime is the revellers' wearing crowns of fennel and white poplar: the former is closely connected with Dionysus;¹¹⁹ the leaves of the latter are associated with the catbasis of Heracles, which is related to Orpheus and Eleusis.¹²⁰

Traits shared with the cult of the Mother have been noted. Additionally, the cry 'Hyēs Attēs Attēs Hyēs' is said to contain the name of Attis, the minister of the Mother. This etymology cannot simply be the late result of itacism, but is attested fairly close to the time of Demosthenes.¹²¹ If we accept this explanation of the cry, we probably have, on the one hand, a 'foreign' element in the account since no cult of Attis performed by Greeks is known before Roman times outside the Piraeus.¹²² On the other hand, we have a contemporary testimony that Hyēs is an epithet of Dionysus, possibly even an official cult name.¹²³ This suggests the juxtaposition of an accepted Athenian and a rather suspect Phrygian deity.

Another genuinely Attic feature seems to be the declaration of the purified initiate: 'I've fled evil; better things I've found.' Later writers report that this

¹¹⁶ Casket and winnow are common features in mystery cults, in particular in Eleusis; the winnow is used even in the initiation at marriages (cf. below). The coins in the Attalid empire called *κιστοφόροι* and showing a snake with an ivy crown refer to Dionysus (Nilsson 1967 74, ii. 172 n. 7; his attribution of that particular snake to Sabazius, although the god is linked with Zeus in the Attalid kingdom, shows his willingness to see Sabazius as closely related to Dionysus as possible). On the preferable *lectio κιστοφόρος* cf. Wankel (1976), 1145 16; the *lectio κιστοφόρος* would even strengthen the Dionysiac character of the description, cf. also Henrichs (1962), 230 1.

¹¹⁷ From the start, Orphism drew on the rites of Dionysus, cf. the evidence in Robertson (2003), 219 20. Some sources rather seem to indicate a merger, e.g. Hdt. 2. 81, cf. M. L. West (1983), 15 18; see also the sacred writings in the rites of Dionysus, *BGU* 1211.

¹¹⁸ Orphic poetry on the afterlife (represented mainly by Eleusis) Parker (1996), 55, Baumgarten (1998), 82 3, Henrichs (2003), 214; the non-initiated lying in the mud Graf (1974), 104 5.

¹¹⁹ *μάραθρον* is not quite the same as *νάρθηξ*, out of which the thyrsos staff was made, but both sorts of fennel are described as similar in Theophr. *Hist. pl.* 6. 1. 4, Diosc. *Mat. med.* 4. 78, 153. In Lex. Pat. 154. 28 (*Phot. Lex. s.v. μαράθῳ καὶ λεύκῃ*) both *μάραθρον* and *λεύκη* are called *φυτὰ μυστικά* with a connection to death, which might, though, derive from Demosthenes.

¹²⁰ White poplar: Eratosthenes *FGrH* 241 F 6, Pausan. 5. 14. 2; on Heracles, Eleusis, and Orpheus cf. Calvo Martínez (2000), 67.

¹²¹ Neanthes (3rd c.) *FGrH* 84 F 37 (Harp. s.v. *Ἀττης*) τὰ δὲ περὶ αὐτὸν [*Ἀττην*] δεδήλωκε *Νεάνθης*: *μυστικὸς δὲ ὁ λόγος*. Attis is called Phrygian in the same passage.

¹²² Cf. n. 121; Lancellotti (2002), 74; Vermaseren (1982) no. 308 is a relief dedicated to Angdistis and Attis by a Timothea at the end of the 4th or start of the 3rd c. The name Angdistis is, however, the Phrygian name of the Mother. The comic poet Theopompus shows no great sympathy, either (*PCG* 28); a terracotta from the Agora (Vermaseren 1982 no. 140) presents Attis (?) with a Phrygian cap in a non-majestic position (possibly in ecstasy).

¹²³ From Cleidemus (*FGrH* 323 F 27), an Athidographer and exegete of the 4th c. As Photius and the *Suda* quote (from his 'Exegeticon'? cf. *FGrH* 3 b (Suppl.), i. 85) *ἐπιτελοῦμεν θυσίας αὐτῷ*, it sounds like an official Attic rite; however, see Ar. *PCG* 908 for a deity of the same name counting as a foreign (that is not necessarily non-Greek) god.

formula was part of the wedding ceremony. Although the wedding was a sort of initiation, one should be cautious about supposing a general use in mysteries;¹²⁴ the testimony that provided later lexicographers with the reference takes the wedding as a starting-point for the phrase¹²⁵ and does not at all refer to mysteries. In Alexandria, the phrase has become a proverb to be uttered after a good omen, not a common formula of religious rites. So for an Athenian the application of the wedding formula in the mysteries of a hardly definable deity might seem appropriate, but still displaced.

Thus far, these features seem to be realistic elements of mystery cults. The ceremony of Aeschines' mother is a hotchpotch of various rites and the audience must have recognized at least some of them from their own participation in the celebration of mysteries. Since it is not clear whether such a high degree of syncretism was normal in private cults, the effect on the audience remains in doubt. One possibility is that this is an extreme case of blurring different cults with the actual object of worship becoming secondary and unidentifiable; the mixture of deities and cults deprives the rites of any serious content and creates a strange, blurred picture of Aeschines' practice of adoration. This might have had a merely entertaining effect or it could have evoked a disgusted reaction from the ordinary Athenian. Demosthenes' picture of Aeschines' rite is thus indeed comparable to the painting on the Ferrara crater: it eludes any certain interpretation, and the beholder/listener is left puzzled, maybe amused by the incongruity. Supposing that Demosthenes is making up a bizarre fusion of every possible cult, then his technique is probably even closer to Aristophanes' in the initiation scene of the *Clouds*. The comic poet also blurs elements of several cults into one absurd ritual.¹²⁶ In addition to this, he inserts some openly comic features which guide the audience's interpretation: for example, Strepsiades is horrified and fears he could be killed because he is crowned for the initiation like an ox before the sacrifice.¹²⁷ In the case of the *Clouds*, the effect is less clear-cut because Socrates and Strepsiades share the ridicule. In Demosthenes, the only person named is Aeschines; he alone is at the centre of the absurd actions.

It is, however, also possible that the degree of syncretism in this particular cult as described by Demosthenes was not abnormal; the common elements form the 'serious' background against which the comical elements stick out. The ceremonies pretend to be in conformance with normal procedures, but in the details their preposterousness becomes obvious. The difference between the two ways in which the description works lies in whether it was ridiculous in its entirety or

¹²⁴ Correct: Dillon (2002), 338 n. 130 'the rites [sc. of Aeschines] were borrowing from a marriage proverb'; on the character of the wedding as an initiation cf. most recently Ferrari (2003).

¹²⁵ Plut. *Prov.* 1. 16 (*ParGi.* 323 4, with additional detail; Zen. 3. 98, Eust. *Od.* ii. 30. 11 13) ἐπὶ τῶν μεταβολῶν ἐν ἑαυτοῖς κρείττονα οἰωνίζομένων. Ἀθήνησι γὰρ ἐν τοῖς γάμοις ἔθος ἦν κτλ. Note the introductory causal γάρ. In the same passage we hear of the use of the winnow in the marriage procession.

¹²⁶ Bonnechère (1998), 441 3.

¹²⁷ Explanation in Dover (1968*b*), 131 2.

there were single elements that undermined the seriousness of the rest of the ceremony.

The certainly comic elements, which guarantee the overall effect of the passage, are not restricted to the clear examples given above. Apart from these grotesque elements there are a few more features that produce a comic effect at Aeschines' expense. One is the lack of clearly defined roles of the sexes. Frequently, the cult of Aeschines' mother has been described as one dominated by women.¹²⁸ There is, however, no evidence in Demosthenes' account for this claim: only the last sentence in his description mentions old women as attendants of the rites (and they appear as just one group among the worshippers).¹²⁹ In the preceding passage all forms referring to the cult group are (generic) masculines.

The apparent mingling of sexes as such might already be a source of indignation for some members of the jury and a source of amusement for others. It was not an unknown phenomenon in Greek cults, but the normal state would have been that men and women were separated or at least that everyone was initiated by a priest of his or her own sex.¹³⁰ Thus Demosthenes, not mentioning a male priest, but only the male assistant of the priestess, might be suggesting a rite without proper order. The very committed performance by Aeschines (whose adulthood is emphasized at the start of the passage) of the typically female *ὀλολυγῆ*, the office of bearer-of-the-winnow, and the handling of snakes might contribute to this impression.¹³¹ Even if the unrestricted mingling of both sexes was not offensive, it confirmed the impression of the cult's being somewhat obscure and odd, and its remoteness from the regulations of a group of worshippers accepted by society.

One apparently common suspicion against the private cults without separation of men and women was that of orgiastic sexuality. Bacchic rites may have been particularly susceptible to this sort of assumption.¹³² In Demosthenes' speech we have discreet allusions to a sexual component of the rites, too. The marriage formula, bearing the character of initiation, might not hint too openly at this sort of encounter. The old women's flattery of the young minister is more revealing. The word *γράδια*, by which Demosthenes denotes them and which derives from the linguistic register of comedy, again devalues the cult

¹²⁸ e.g. Dillon (2002), 159, who at least suggests this may be rhetorical distortion; in Dem. 19 there is no indication, either, of the ratio of the sexes, though I suppose we must not expect a coherent picture in both speeches (as can be seen from the description of Aeschines as a child in 19. 199 and as an adult in 18. 259).

¹²⁹ Cf. Yunis (2001), 256.

¹³⁰ e.g. *LSAM* 48, also in *IEryth.* 206. However, Eleusis had no such distinction; the hierophant and the priestess of Demeter and Core had different functions, cf. Clinton (1974), 46 7, 68 9.

¹³¹ Cf. Henrichs (1962), 230, (1982), 139, 147.

¹³² Cf. Eur. *Bacch.* e.g. 221 5, 686 8, *Ion* 550 4, perhaps also Ar. *Lys.* 1 (and Henderson 1987*a* on the places and festivals in Il. 1 4), the same applies to the Bacchanalia in Livy 39. 8. 6 7 (in this case it is a foreign cult).

making its attendants appear as ugly old hags.¹³³ Finally, Demosthenes has them giving Aeschines various sorts of sacrificial cakes 'as payment'. It has not been noticed that sacrificial cakes as payment are strange. They are the proper sacrifice and the priest would certainly have his or her share.¹³⁴ An additional gift, however, in this form is hard to understand. Probably Demosthenes is alluding to the motif of lovers sending sweet cakes to their beloved.¹³⁵ In comedy, it becomes distorted: old women, unable to attract young men by their beauty or similar qualities, try to seduce their young favourite by sending him cakes. In the *Ploutos* (ll. 975–1002), Aristophanes puts on stage such a woman who explains that, as long as the god of wealth was blind, her lover always came back to her. He asked for money and claimed it was out of affection. But now that Ploutos has changed his method of distribution the young man has sent back her cakes and sweets with the request not to bother him any longer.¹³⁶ The comic context in *On the Crown* makes it likely that Demosthenes is alluding to more than just the old hags feeding Aeschines.¹³⁷ Old women in comedy are very frequently depicted as lustful.¹³⁸ The cakes are adapted to the occasion: instead of *πλακοῦντες* and *ἄμητες* (sweet, milky cakes) they give him soppy bread, twisted rolls, and flat cakes, some of which fulfil the requirement of sweetness, but others consist of lentils. This is another distortion that might have enhanced the comic effect.¹³⁹

If this interpretation is right, it sheds some light on the way Demosthenes wants Aeschines to be perceived: on the one hand, the young man Aeschines chased by the old women is just ridiculous; he cannot be taken seriously. This certainly has an effect on the reception of his arguments. Even though it is not likely that any of the *dikasts* really believed what he was told by Demosthenes, something might stick, and even if not, the laughter alone of the audience is humiliating enough. The 'speaker can raise a laugh at his opponent's expense, inflicting on him a loss of face and so subverting the audience's capacity to give his case their serious attention'.¹⁴⁰

On the other hand, the cult certainly earns no good reputation if it is exploited in this way by the old women. Finally, the parallel from the *Ploutos* shows us why

¹³³ The word *γραιὺς* is already abusive, the diminutive adds to this tone, cf. Henderson (1987b), 110, Wankel (1976), 1065 and 1147; in Xen. *An.* 6. 3. 22, for example, it probably stresses the miserable state of what was left by the Thracians.

¹³⁴ On the importance of cakes cf. Kearns (1994).

¹³⁵ Ael. *VH* 11. 12 (perhaps also Ar. *PCG* 211, Men. *PCG* 381); the custom seems to have a parallel in the wedding ceremony: Alexis *PCG* 168.

¹³⁶ A close parallel is Plut. *Demetr.* 27. 10; for gifts by old women in general cf. also *Thesm.* 345.

¹³⁷ Demosthenes does not state that only the old women provide Aeschines with the cakes. However, the syntax so suggests: they are the last group of people mentioned, and the form *τούτων* must refer to Aeschines' services as guide etc., for which he has been commended by them. So even if other attendants too gave him cakes, Demosthenes focuses on this particular group

¹³⁸ Cf. Henderson (1987b), 117–19, in particular nn. 92–3.

¹³⁹ However, *πλακοῦντες* could also be used as sacrificial cakes, cf. *LSAM* 43. 2.

¹⁴⁰ Heath (1987), 25, cf. Harding (1987), 31.

such a 'deal' of cakes against favours works: it is sheer need that drives the young man into the arms of his female suitor. Similarly, Aeschines accepts the gifts because he needs them. Thus we arrive, as in the *Parapresbeia* speech, at the social meaning of the slander. Aeschines is depicted as wretched in several ways: one manifestation is his allegedly taking part in a topsy-turvy cult.

The portrayal of cult activities makes Aeschines contemptible by placing him at the edge of society, just as in the *Parapresbeia* speech. The economic and social aspect is the same in both speeches: besides working for his father like a slave-boy,¹⁴¹ he administers a strange cult, presumably because of his need for money; it is, moreover, not a properly Athenian cult, but a semi-barbarian rite, no doubt imperfectly imitating the familiar Athenian rituals. Making Aeschines a ridiculous figure is in line with many other passages in the speech. Attention has been drawn to the many devices Demosthenes has taken over from comedy in his characterization of Aeschines.¹⁴² Aeschines is depicted in a way that finally equates him with the comic ἀλαζών, the braggart.¹⁴³ This kind of attack by burlesque is new in this speech as compared to the *Parapresbeia* speech. Whereas in the latter Demosthenes had described him as a threat to Athens, he now uses him to produce a contrast to his own commitment to the city. Depicting his opponent as a buffoon (at this trial as well as in the political life of the 340s), he can underline his own characterization as a serious politician and undermine Aeschines' credibility.¹⁴⁴

Most importantly, however, the demonstration of Aeschines' miserable life, of which his participation in perverted rituals is evidence, forms part of one of the main themes in the second half of Demosthenes' speech: the refutation of Aeschines' accusation regarding Demosthenes' τύχη and the comparison between the opponents.¹⁴⁵ The sarcastic conclusion of the passage on the rites, 'who would not regard himself and his lot in life as truly fortunate?', makes the context clear, as the Greek ends on the word τύχη. Later, Demosthenes will take up the account by contrasting Aeschines' and his personal fortune saying 'You initiated, I was initiated' (§265), stressing the difference in standing and role he and his opponent allegedly have in the city.¹⁴⁶ The context that comprises education, the

¹⁴¹ The notion that Aeschines had to work for his living would be enough disgrace for him, though this is a common form of abuse (cf. above, Ch. 2 n. 56). The direct comparison to a slave even tops this. The same effect is reached by the later statement that Philip would never have accepted the son of a *τυμπανιστρία* as a friend (§284).

¹⁴² Rowe (1966), 398–402.

¹⁴³ Ibid. 402, the characterization is not consistent (cf. Dyck 1985, 44), but that has no effect for the interpretation of the particular passage.

¹⁴⁴ Of course, the comic tone does not pervade the whole speech (cf. e.g. §142), but there is an increasingly mocking tone, which reaches its climax in this passage.

¹⁴⁵ Cf. Koster (1980), 87–8.

¹⁴⁶ The remark has been interpreted by some as evidence for Demosthenes' being a member of Glaucothea's cult group, e.g. Wankel (1976), 1161–12. This seems strange and has rightly been rejected by others (e.g. Goodwin 1901, 187, who supposes Demosthenes refers to his own initiation at Eleusis). Otherwise it would undermine Demosthenes' tactic in his depiction of the cult. How

opponents' role at the tragic competitions, and their political activities makes it clear that the distinctly religious character of the initiation plays at best a minor role. The worshipped deities as well as one's function in the rites rather illustrate one's place in society, which is, in turn, the manifestation of one's fate or *τύχη*. Demosthenes does not accuse Aeschines of worshipping the wrong gods: instead, the cult Aeschines participates in reveals that he does not have the right to blame Demosthenes for his *τύχη* and that he is wrong from the start in saying that this *τύχη* (as Demosthenes interprets the term) was bad.

Demosthenes exploits Aeschines' alleged activity in the private mysteries as a way to bias the audience against him, but also for the direct refutation of Aeschines' probably most dangerous argument. His attack has many facets: thus we cannot exclude that the 'barbarian' and ecstatic elements alone might have had a repulsive effect on some people in the audience. Others might just have been amused by Demosthenes' comic distortions. One difference, however, from the *Paraprosbeia* speech is clear: Demosthenes never claims that the Athenians have ever punished anyone for partaking in private mysteries. The mysteries are not described as a danger for Athens, neither for her relation to the 'proper' gods nor for her religious or social stability and cohesion. The cult as described in *On the Crown* is simply too ridiculous to have any such significance.

Conclusion

Demosthenes does not just leave aside arguments based on religious concepts, but rather keeps religion deliberately underemphasized. Clearly religious elements serve mainly to delay or avoid the proper treatment of religious issues raised in Aeschines' speeches or to make argumentation on a non-religious basis possible: Demosthenes takes up his opponent's case and seems to deal with the issues, but deprives them of their religious content. The refutation works on a purely non-religious level that is not concerned with gods or ritual purity. A large part of his counterattacks target Aeschines' social standing: thus he takes up Aeschines' exaggerated invocation 'O earth and sun and virtue and understanding and education' and ridicules it, not by dwelling on the religious content but by the complaint about the false claim of education (§§127–8):¹⁴⁷

could he criticize Aeschines for what he did, if he had himself been initiated by his opponent? His own credibility in his self-presentation as favoured by *τύχη* would have suffered if he had been on one level with, for example, the old women he describes. It seems more sensible to understand the sentence as a pointed but inaccurate antithesis for the sake of rhetorical flourish. The focus is on Aeschines' inferior standing and on the roles of servant and recipient in general; direct contact in these roles might be unlikely. If we took the sentence literally, we should also have to accept that Demosthenes was taught the alphabet by Aeschines (*ἐδίδασκες γράμματα, ἐγὼ δ' ἐφοίτων*, §265). So Demosthenes describes himself as a member of some cult group, not of that particular one.

¹⁴⁷ Responding to Aeschin. 3. 260.

εἰ γὰρ Αἰακὸς ἢ Ῥαδάμανθυς ἢ Μίνως ἦν ὁ κατηγορῶν, ἀλλὰ μὴ σπερμολόγος, περίτριμμα ἀγορᾶς, ὄλεθρος γραμματεῦς, οὐκ ἂν αὐτὸν οἶμαι ταῦτ' εἰπεῖν οὐδ' ἂν οὕτως ἐπαχθεῖς λόγους πορίσασθαι, ὥσπερ ἐν τραγωδίᾳ βοῶντα "ὦ γῆ καὶ ἥλιε καὶ ἀρετῇ" καὶ τὰ τοιαῦτα, καὶ πάλιν "σύνεσιν καὶ παιδείαν" ἐπικαλούμενον, "ἢ τὰ καλὰ καὶ τὰ αἰσχρὰ διαγιγνώσκεται". ταῦτα γὰρ δῆπουθεν ἤκουετ' αὐτοῦ λέγοντος. σοὶ δ' ἀρετῆς, ὦ κάθαρμα, ἢ τοῖς σοῖς τίς μετουσία; ἢ καλῶν ἢ μὴ τοιούτων τίς διάγνωσις; πόθεν ἢ πῶς ἀξιοθέντι; ποῦ δὲ παιδείας σοὶ θέμις μνησθῆναι;

If the prosecutor were Aeacus or Rhadamanthys or Minos and not a sponger, a common scoundrel, a damned clerk, I do not believe he would have spoken that way or produced such repulsive expressions, bellowing as if on the tragic stage, 'O earth and sun and virtue' and such like, or appealing to 'understanding and education, through which we distinguish noble from base.' You did hear him utter those words! But what do you or yours, you piece of filth, have to do with virtue? How can you tell the difference between what is noble and what is not? How did you come by that ability? How are you worthy of it? And what gives you the right to talk about education?

Equally, not the deity worshipped by his mother is attacked, but the suspicious fellowship and their ridiculous rites. Whereas Aeschines combines his attacks with a demonstration of Demosthenes' impious conduct, the latter is content to show his counterpart's deficiencies as an Athenian. For, with a similar tendentiousness, Demosthenes repeats the old claim that Aeschines is Philip's hireling.

So, why is it that the distribution of roles seems to be so clear-cut in this trial? One reason is of course that Aeschines' upbringing is indeed his weak spot. Demosthenes may exaggerate, but Aeschines certainly did not have the family background of an average Athenian politician. The number of references in which Aeschines asserts that he comes from a creditable milieu and the tricks he uses to make this point are revealing.¹⁴⁸ As will be shown in Ch. 5, this was a regular feature in his speeches. At the same time, Demosthenes can be sure that he is rather safe from any such allegations. So, in his denigratory passages he emphasizes the social aspect.¹⁴⁹

The other reason, which is more important for this chapter, is that in turn religion is Aeschines' strong point. This does not necessarily mean that he is extremely pious himself. It seems, however, that he used religious argumentation frequently and thus might have gained a reputation for this as a recognizable feature of his speeches. (Again, this is a topic of a later chapter and need not be discussed here.) He also repeatedly applied for religious offices and was elected by the people. Demosthenes, in turn, is all the more eager to tell us when Aeschines was deposed from such an office for some reason.¹⁵⁰ This and his repeated attacks on Aeschines' mother might constitute an attempt to undermine the image Aeschines propagates of himself. By contrast, the only time Demosthenes claims

¹⁴⁸ Cf. Harris (1995), 22 8.

¹⁴⁹ On the *topos* in general cf. Ober (1989), 270 9.

¹⁵⁰ Dem. 18. 134, the way in which Demosthenes describes the election as *πυλάγορος* (§149) similarly suggests illegality.

religious authority in his forensic speeches is, as has been seen, in the speech *Against Midias*, where his religious standing as a choregos is rather questionable.

In the present case, I have argued, it was of particular importance for Demosthenes to address the religious issues because they were not just brought forward by Aeschines. They had featured in the general political debate and defamation since Chaeroneia. Demosthenes thus had to fight a prejudice that might have existed in parts of the jury, refreshed by Aeschines' prosecution speech. It was not enough simply to demolish the individual prosecutor's position, but he was forced also to address the issue. He does so by reminding the audience as little as possible of the real accusations.

However, this tactic of diminishing or denying the relevance of religion for the judgment to be passed on him is in line with his other forensic speeches analysed here. Demosthenes consistently avoids talking about the evils of impiety and pollution. Even where he points out his opponent's misconduct towards the gods, he does not elaborate it as a charge, demanding condemnation on this basis. In the following chapter, I shall show how much more explicitly religious misdemeanour was exploited by other speakers and how it could be made an argument in itself on which to base the appeal for certain decisions of the dikasts.

Demosthenes as Speechwriter

THE three speeches considered so far derived from the time after the *Olynthiacs* and the *First Philippic*. As we learn from Aeschines' *Against Timarchus*, he was established and well known to the audience by that time.¹ In all three speeches Demosthenes does not only speak himself, but also on his own account, as a figure of some public interest and standing. In contrast to this situation, the three speeches he wrote in the 350s, although they attack politicians and generals, were delivered by people of whom we hardly know even the names. Demosthenes may have made his first attempts on the rostrum, but still had a low profile.² So the forensic speeches of that time may be used as an indication how Demosthenes could employ religious argumentation, if he was so inclined, without regard to his own person. Together with the study of the speeches of other orators in the next chapter, this will make it possible to show to what extent Demosthenes' use of religion as analysed is or is not representative of Athenian oratory in general.

The distinction between speaker and speechwriter in Demosthenes' logographic public speeches will help confirm that his use of religious argumentation depends on the personality (or self-portrayal) of the speaker. Demosthenes differentiates between these two functions, so it is apparent that he deliberately adapts his style of argument to the individual he 'impersonates' in writing on each occasion.

The Dangers of Unavenged Murder: *Against Aristocrates*

From Dionysius of Halicarnassus we learn that Demosthenes did not deliver *Against Aristocrates* himself, but wrote it on behalf of a certain Euthycles.³ The reliability of this information has recently been questioned by Raphael Sealey:⁴ since the biographical details we get in the speech match Demosthenes' career, he says, we should assume that it was Demosthenes himself who accused Aristocrates of proposing an illegal decree. Ernst Badian rejected this theory, but did not bring forward any arguments for his decision apart from the ancient sources.⁵ The following section is an attempt to show that the ethos of the speaker is not

¹ Aeschin. 1. 119, 173 5.

² On dates cf. Lane Fox (1997), 183 7.

³ Dion. Hal. *Amm.* 1. 4.

⁴ Sealey (1993), 131.

⁵ Badian (2000), 42 n. 44. Euthycles is also mentioned in Lib. *Arg.* 21. 3 and by the scholia (23. 1, 53).

compatible with that of Demosthenes in his later speeches and also divergent from his self-presentation in his early work. As a result, we have to conclude that Demosthenes is most unlikely to be the speaker. If he were, the change of 'personality' would make the impression of a deliberate attempt to conceal his identity with the aspiring young politician Demosthenes. In any case, inconsistencies with, or differences from, the references to gods and cults in speeches examined earlier will indicate that the sort of religious argumentation may depend on the speaker's ethos; Demosthenes as a speechwriter is able to use religion in a way he does not exploit when he speaks as a politician.

The self-portrayal of 'Euthycles'

In the 350s we cannot say exactly when⁶ a man called Aristocrates had proposed to protect the general Charidemus by stating that anyone who should kill him was liable to seizure and extradition from the territory of the Athenian allies. The proposal was stopped by a challenge leading to a *γραφὴ παρανόμων*. The trial took place in 353/2. We can only guess at the outcome and the intention behind that proposal. It clearly implies that Charidemus' importance to Athens was acknowledged. So probably there is some political manoeuvre comparable, for example, to the conferment of an honorary crown lurking behind the seemingly neutral proposal.⁷ Euthycles' attacks on Charidemus and his political record may be taken as evidence for political interests in the background. However, we neither know whom exactly Charidemus was allied with in Athens nor what group opposed the promotion of his status to that of a person deserving special protection.

The fact that we know so little about the background of the trial against Aristocrates and the figures involved in it has posed considerable problems to interpreters, even where they accepted Dionysius' statement.⁸ It is still unclear whether Demosthenes became active in the case in order to promote a certain policy and a political stance or whether he just offered his services for pay and in order to demonstrate his ability and ambition in rhetoric. In the most detailed study of the speech, Terry Papillon claims that Euthycles shares Demosthenes' views, but

⁶ Lane Fox (1997), 186 suggests that the first draft of the speech was written in 356 and worked into the version that is now extant shortly before the trial. This means that Aristocrates had made his proposal as early as the first half of the 350s.

⁷ Cf. Vorndran (1922), 6 'einen Antrag mit derartig unerhörten Privilegien für den Schwiegersohn und Feldhauptmann eines thrakischen Dynasten können wir uns nur von einer großen Partei aus politischen Motiven eingebracht denken.' The speaker in places suggests that Aristocrates proposed the decree as a member of a group, e.g. §3 or *ὑμεῖς* in §43. Vorndran's detailed reconstruction of the situation (1922, 66) may, however, be a bit too speculative. In places, e.g. §18, Euthycles speaks of his own side as 'we', suggesting that he too was not alone in prosecuting Aristocrates.

⁸ Vorndran (1922), 64 interprets the speech as a means to keep the enthusiasm after the battle at Thermopylae low, Badian (2000), 24–5 as personal revenge of Demosthenes on behalf of Cephisodotus.

that 'Demosthenes himself is the driving force'⁹ behind the attack on the defendant. This statement is rather bold given that everything we know about Euthycles derives from this very speech. At the same time Papillon states that Euthycles' problem was that the Athenians hardly knew him¹⁰ but how could we be sure about this? After all, Euthycles was a trierarch and as such at least eminent through his riches. As we lack further evidence, the only way to find out about the general attitude of the speaker is to look at his self-presentation in the speech.

The mention of the trierarchy (§5) is itself a sign that the speaker is not ashamed to admit that he is far wealthier than the average Athenian.¹¹ If combined with a reference to one's public services and an appeal for sympathy this would not be surprising.¹² Yet the speaker makes no use of this opportunity to underline his solidarity with the audience. But failing to depict himself as a friend of the people would still not be sufficient to suggest that the prosecutor is an anti-democratic member of the elite. However, this particularity is combined with more elements of a distanced relation to the δῆμος, in particular in the proem. In a series of instances the speaker disregards the expectations and predilections of an ordinary jury. The self-stylization as a person abstaining from public affairs is conspicuous: his description of his political inactivity goes beyond the formulaic excuses for launching a prosecution. For example, he states that he has important reasons, that is ones of public interest, for appearing in court (§§1, 4). This thought is underlined by his insistence that he is not a member of the political establishment, the 'trusted politicians', nor of the class of 'annoying' orators.¹³ Experienced orators are all but decried as inferior to the 'better' people who prefer a quiet life (§5). His ostentatious reluctance to enter the stage makes the speaker look like one of the rich ἀπράγμονες, those keeping away from any sort of participation in public life.¹⁴ These statements do not go well with Demosthenes' own biography: by the time the plea was delivered, he had probably already addressed the assembly.¹⁵ Thus, even though he was not

⁹ Papillon (1998), 102; Badian (2000), 24 speaks of him as probably 'to some extent Demosthenes' mouthpiece'.

¹⁰ Papillon (1998), 46.

¹¹ Cf. Davies (1971), pp. xxiii–iv, who gives a minimum property of two to three talents.

¹² Millett (1998), 229–43, but cf. the reservation of Johnstone (1999), 101 with 167 n. 27. Cf. Demosthenes' juxtaposition of his services to the state with Midias' (Dem. 21. 154–7); other instances are Lys 21. 11–12, Isoc. 16. 35; for the negative cf. Lycurg. 139, Dem. 59. 117.

¹³ πολιτενόμενοι καὶ πιστευόμενοι as opposed to the ἐνοχλοῦντες. It is not quite clear who these 'annoying' orators are; the contrast to the first group suggests something like those not trusted by the people. A similar idea is presented in §§146–7, where politicians across the board are denounced as highly knavish (πονηρότατοι). There, the criticism of the people is even harsher because they are said to rely on these πονηρότατοι all the same. Cf. also §201. Similar prejudices might be exploited in *Against Androtion*, Dem. 22. 4, 37, cf. Ober (1989), 105–6.

¹⁴ Cf. Carter (1986), 111–14, Lateiner (1982).

¹⁵ According to the dates reconstructed by Lane Fox (1997) he had given two of his assembly speeches (and supported the indictment of Leptines' law). According to the traditional dating (Dion. Hal. *Amm.* 1. 4), even more speeches would be earlier than this one.

among the prominent politicians, he would have had problems in describing himself as the quiet man who is presented in the proem of *Against Aristocrates*.¹⁶

A degree of scepticism towards democracy not befitting an ambitious young politician is also implied in a (missing) feature of the speech: whereas in all other known trials on unconstitutional decrees the prosecutor takes the role of a safeguard of democracy, the speaker of *Against Aristocrates* nowhere uses such arguments.¹⁷ We shall see that in the treatment of the illegality of Aristocrates' proposal he does not speak about the dangers for Athens' constitution if the decree is sanctioned.¹⁸ He does not defend the existing laws as a guarantee for the preservation of the people's power and the civic institutions working properly, but with an emphasis on tradition. He even goes so far as to describe the Areopagus as respected by tyrannies as well as by oligarchies and democracies (§66) without any derogatory remarks on the first two constitutions.¹⁹

Finally, he does not try to flatter the jury. Even apart from the lack of enthusiasm for democracy, his *captatio benevolentiae* is not developed very far; the compliments usually paid to the dikasts are passed over. Nothing is said about the justice of their decisions and the trust the speaker has in them.²⁰ His approach to the jury is rather that of an instructor: the functions of making the audience attentive and receptive to learn²¹ dominate in the proem by far. Criticism of the people, that is in particular of the assemblymen who voted for Aristocrates' proposals, is clearly detectable. Out of ignorance they have been deceived by a faction (§3, cf. §§208–14) and hold the false opinion that Charidemus is a benefactor to the city (§6).

Thus there is a consistent ethos in the proem (and the rest of the speech), of a man who is reluctant to engage in public affairs and sceptical about the dealings and qualities of the people. He would not have initiated the trial, had it not been for an important political reason, namely the protection of the Athenian possessions on the Chersonese. We cannot know what motives really lay behind the prosecution. One might suggest personal financial interests in the Chersonese or the safety of the corn fleet trading with the kings around the Black Sea. The speaker might even be acting on behalf of a conservative political group, trying to weaken the 'more democratic' factions.²²

¹⁶ From Dem. 16. 1 (and 4. 1) it seems that Demosthenes does not speak as one of the first, i.e. most prominent, politicians, but there are no signs of fundamental criticism against the political class.

¹⁷ Hansen (1974), 58, cf. Dem. 20. 3, 24. 5, 154, Aeschin. 3. 6–8, cf. the phrase of the *κύων τῶν δῆμων* in Dem. 25. 40.

¹⁸ The fact that the decree had become void after the lapse of one year is not decisive. The 'safeguard' argument is still possible, as can be seen from Aeschines' prosecution of Ctesiphon.

¹⁹ The reference to the Areopagus as such should not be seen as an anti-democratic trait, for it was probably not perceived as the last bastion of conservatism in the city; the evidence of Isocrates' *Areopagiticus* is misleading and not corroborated elsewhere, cf. Engels (1988), 183, Wallace (1989), 157–8, Hansen and Pedersen (1990), 77. The intention of the decree of Eucrates (*GHI* 79) is still not absolutely clear (e.g. Ostwald 1955, 125–6 and Engels 1988, 203–4).

²⁰ e.g. Aeschin. 3. 1, Dem. 24. 3.

²¹ Cf. already *Rh. Al.* 29. 1, 1436^a33–8.

²² In the time after Chaeroneia, Charidemus is clearly an antagonist of the 'conservative' Phocion, Plut. *Phoc.* 16. 4. On factions, cf. above, n. 7.

In any case, the speaker seems to display a background very much different from that of the committed democrat Demosthenes, as he appears in other speeches. Therefore, if we see that the religious argumentation differs from that of the other speeches, but is consistent with the ethos of the proem, interdependence between the two is the most likely explanation.

The religious ideas in *Against Aristocrates*

If we compare the speech *Against Aristocrates* with other pleas in *παρανόμων* trials, a distinctive feature is that almost all remarks concerning religion are to be found in one part of the argument. It has been suggested that there was a regular pattern in the disposition of prosecution speeches in these cases: the main body consisted of three parts on the illegality of the decree in question, on its inexpediency for the state, and (in case of honorary decrees) on the unworthiness of the honorand.²³ While it is usually the last part that contains the strongest religious argumentation (in connection with personal conduct or impiety), in *Against Aristocrates* the bulk can be found in the section on illegality.²⁴ Demosthenes dispenses with denigration in religious terms, restricting himself (or the speaker) to the moral shortcomings of his opponents. The second part of the speech, the demonstration of the inexpediency of the decree, includes no references to the sphere of religion at all.

The prominence of religious argumentation in the section on the illegality of Aristocrates' decree is all the more conspicuous. After some introductory remarks (§§19–24), this part of the *argumentatio* falls into two halves, the first explaining how the decree contravenes the Draconian laws on homicide (§§24–63), the second that the traditional homicide courts are most venerable and just (σεμνόν, δίκαιον) and that they are threatened if Aristocrates' decree is not abrogated (§§64–99). The second part is more of a digression, not concerned with laws but the devaluation of age-old institutions.

In both parts, the speaker is not content with proving the contradictions between the decree and the relevant laws, but exploits the religious notions

²³ Cf. Yunis (1988a), 370–3. In this speech the parts are distinguished particularly neatly, already in the *propositio* (§§18–21): the legal part consists of §§22–99, that on expediency of §§100–43, that on worthiness of §§144–95, cf. Papillon (1998), 30–7. An exception to this model is Dem. 22, where the invective is directed against the proposer because the council – a civic institution – was the recipient. Moreover, as we shall see later, that speech was a *δευτερολογία*, so that the conventional arrangement was left to the first speaker.

²⁴ There are only a few instances of oath-breaking by Charidemus (§§154, 171, 176–7). However, the whole passage deals with Charidemus' unreliability and lack of loyalty towards Athens. Demosthenes does not give the oath special significance within Charidemus' repeated changes of side. So these passages should not be counted as attempts to undermine Charidemus' reputation in a religious context. Other appearances of religious concepts are equally sparse. Twice the speaker employs abusive language, calling the Megarians accursed (κατάρατοι, §212, a hackneyed political slogan, cf. Dem. 13. 32, Didymus in Dem. col. 14. 1–15. 10) and the anonymous orators who propose honours in great numbers 'accursed and odious to the gods' (κατάρατοι καὶ θεοῖς ἐχθροί, §201). Again, denigration in religious terms is not consistent or sustained – no emphasis is laid on this aspect.

connected with the different sorts of homicide and the legal procedure applied to them. There is no extended argumentation on the religious implications of Aristocrates' decree. However, remarks are frequently interspersed in the presentation of procedures and courts which point out the conformity of existing rules with the requirements of sacredness and purity. It is implied (a few times even stated directly) that a change of the rules would result in not meeting these requirements: the danger is that, without a formal trial, an innocent person might be put to death and the city thus incur pollution by blood-guilt.

Right at the start the judicial inquiry with an obligatory formal verdict is said to have been prescribed 'for the piety of the entire state'.²⁵ For the execution of an innocent person must be avoided; a condemnation without trial is not pious (εὐσεβές, §25, cf. §29). This is the first instance in which Demosthenes describes a threat to the purity of the city.

In analogy, various other regulations in connection with homicide and examples of non-abidance by them are described with terms that denote conformance with or a breach of the requirements of religion: the exceptions from the prohibition to kill are praised as unobjectionable in religious terms and admirable (ὁσίως καὶ καλῶς, §54); to kill a murderer is not permissible (οὐχ ὅσιον, §38) unless he enters public places,²⁶ but the form of trial against an already exiled murderer on the shore where he can defend himself without touching Athenian ground is called pious (εὐσεβές, §78); it is likewise ἀνόσιον to put to death without trial a man who has caused death (§76); so it is an ἀσέβημα (§79) to let a murderer escape prosecution, and also to exile an innocent person without trial.

With the exception of ἀσέβημα these terms are conspicuous by their frequency more than by their forcefulness.²⁷ They rather serve to remind the listener constantly of the religious connotations and implications of homicide matters. In two instances, however, pollution is directly addressed as an issue. Aristocrates and his unnamed political friends (who helped to propagate the decree) are referred to as possible bearers of pollution (§§42–3):

καὶ νυνὶ τὸν ἀποκτείναντα Χαρίδημον, ὅντως ἂν ἄρα τοῦτο γένηται, ἂν ἀνταποκτείνωσί τινες λαβόντες ἔκδοτον, πεφενγότα καὶ τῶν νομίμων εἰργόμενον, ἔνοχοι μὲν αὐτοὶ ταῖς

²⁵ ὑπὲρ εὐσεβείας ὅλης τῆς πόλεως, §25. The argument on illegality is clearly unfounded. The clause of the proposal to which the speaker objects (that the murderer of Charidemus should be liable to seizure) does not mean that it was permissible to kill the murderer without trial, cf. Sealey (1993), 299 n. 114, Swoboda (1905), 23. Moreover, the clause seems to have been standard in this kind of honorary award, cf. Koch (1989).

²⁶ On ὅσιον cf. also the Introduction. To bar him is called just (δίκαιον). For the juxtaposition of the two terms cf. e.g. Antiph. 1. 25, Pl. *Euthphr.* 12 E; more in van der Valk (1942), 114–15. The difference is defined in Pl. *Gorg.* 507 B: acting in the right way towards men is δίκαιον, towards the gods it is ὅσιον; in a passage very similar to that of Demosthenes, Xenophon uses the distinction with explicit reference to the gods (*Hell.* 1. 7. 19), cf. also Hyp. 6. 22 and Rudhardt (1992), 30.

²⁷ For example, ἀνόσιον does not regularly denote actions that worsen the relationship between gods and men in Demosthenes, cf. Bolkestein (1936), 116.

φονικαῖς δίκαις ἔσονται, ἔνοχος δὲ σύ καὶ γὰρ “ἂν τις αἷτιος ᾖ” γέγραπται, ἔσῃ δ’ αἷτιος τὴν διὰ τοῦ ψηφίσματος ἐξουσίαν δεδωκώς. οὐκοῦν εἰ μὲν ἔασομεν ὑμᾶς τούτων συμβάντων, οὐ καθαροὺς οἶσιν ὁμοῦ διατρίβομεν . . . ;

In this case, if the man who slays Charidemus (supposing the thing really to happen) is slain in his turn by men who capture him as an outcast, after he has gone into exile, and while he absents himself from the places specified in the law, they will be liable to a charge of bloodguiltiness, and so will you, sir. For it is written: ‘if any man shall cause to be killed,’ and you will have caused it, because it is you who have granted the licence implied in your decree. Therefore if, when the event has happened, we let you and your friends go free, shall we not be living in the society of the impure . . . ?

So the Athenians run the risk, not only of passing an unconstitutional decree, but even of living together with impure people, namely Aristocrates and his friends. The danger is described as a real one, and the idea of cohabitation with tainted people is abhorred in itself. A bit later, by contrast, the one who kills in a way the laws allow (e.g. in self-defence) is called ‘pure’ (*καθαρός*, §55). Since the law seems to use ‘shall not be banished for the killing’ instead of ‘kills with purity’,²⁸ it is clear that Demosthenes introduces the religious category deliberately, dismissing the neutral phrase that states only the legal, not the ritual consequences.

To sum up: the section on the illegality of Aristocrates’ decree is interspersed with strong hints that the regulations Aristocrates allegedly tries to overturn are proper and necessary from a religious point of view. The speaker thus puts forward an additional argument that is independent of the charge that the decree contains an element which is against the law: apart from breaking the law it forces the Athenians to violate religious rules and thus to put themselves in danger as regards ritual purity.

Besides indicating that the new regulations would fail to meet the requirements for the city’s piety, the religious points at the same time reinforce and enhance the charge that Aristocrates’ proposal is contrary to the law. The fact that there are good reasons for the laws’ having the content they have makes the illegality of the decree even more serious. Since the argument that the laws must remain unchanged for democracy’s sake is left out, it is all the more important to give another *raison d’être* for their stability and to show that the consequences of their being changed or rendered invalid are undesirable. Their place is taken by religious arguments: they show that the existing laws are founded on principles more valid than Aristocrates’ supposed modifications. Conformity with the requirements of religion becomes a justification for retaining the laws as they have been passed down.

²⁸ The text of the law in §53 is probably genuine and not a later forgery (cf. MacDowell 1963, 118): whoever added the laws to the manuscripts knew the text, as is clear from the correspondence of §§28 and 37 with *IG* i³. 104. 26–31 on the other forms of homicide. The fact that the text of the law diverges from the paraphrase given by Euthycles affirms the law’s authenticity: its forger would have had to make up the phrase ‘shall not be banished for the killing’ (*μὴ φεύγειν κτείναντα*); this may be too good an invention for an ill-informed forger.

This is made clearer in the section dealing with the different procedures and courts.²⁹ The speaker justifies this digression from the issue of illegality by declaring it as the anticipation of the (in fact highly unlikely) objection that the tribunals are worthless and unjustly constituted (§64).

The importance of these courts is defended mainly by references to myths and to special oaths the participants in trials had to swear. The first court to be treated is the Areopagus. Its venerability (τὸ σεμνότητον) is said to derive from legends (μυθώδη) in which it features. The gods have participated in no court except this one: Poseidon accused Ares of killing his son Halirrothius and Athena intervened in the trial against Orestes (§66). Although the connection between the Areopagus and the myths is well established,³⁰ the account of myths and the mention of gods by their names are a departure from common practice regarding the way individual deities are treated.³¹ Perhaps the high age and authority made it less unusual to refer to certain gods, actually naming them, in connection with the Areopagus than with the heliastic courts. In addition, the regulations around the homicide trials are attributed not to Draco, who wrote down the relevant laws, but to 'whoever they were, heroes or gods'.³² The speaker thus marks it as a somewhat more than human law: for he distinguishes this rule from the laws of Draco, stating that it derives from an earlier source of a higher status than the human lawgiver.³³

The trial of Orestes is alluded to a second time in connection with the court at the Delphinium (§74):

δοκοῦσι γάρ μοι, ὦ ἄνδρες δικασταί, ζητῆσαι τοῦτο πρῶτον πάντων οἱ περὶ τούτων ἐν ἀρχῇ τὰ δίκαια ὀρίσαντες, πότερ' οὐδένα χρὴ φόνον ὅσιον εἶναι νομίζειν ἢ τινά γ' ἔσθ' ὅσιον νομιστέον, λογιζόμενοι δ' ὅτι μητέρα Ὀρέστης ἀπεκτονὼς ὁμολογῶν θεῶν δικαστῶν τυχὼν ἀποφυγάνει, νομίσει δίκαιόν τιν' εἶναι φόνον οὐ γὰρ ἂν τά γε μὴ δίκαια θεοὺς ψηφίσασθαι.

It appears to me, men of the jury, that the first inquiry made by those who originally defined the rules of jurisprudence in these matters was, whether we are to regard no act of homicide as righteous, or whether some kind of homicide is to be accounted righteous; and that, arguing that Orestes, having slain his own mother, confessing the fact, and finding gods to adjudge his case, was acquitted, they formed the opinion that there is such a thing as justifiable homicide for gods could not have given an unjust verdict.

²⁹ For the testimonia and other evidence on the law courts cf. Boegehold (1995), 43–50, 117–50.

³⁰ Poseidon: Eur. *El.* 1258–64, Hellanicus *FGrH* 4 F 38, 169a, Philochorus *FGrH* 328 F 3; Athena e.g. Aeschyl. *Eum.* 570–3, Din. 1. 87.

³¹ Myths are not related in forensic speeches, with the exception of Dem. 23, Din. 1, and Lycurgus, cf. Meuss (1889), 447. The speeches of Lycurgus and Dinarchus, however, generally contain frequent references to religious concepts.

³² οἵ τινές ποτ' ἦσαν, εἴθ' ἤρωες εἴτε θεοί, §70.

³³ At least, there is no evidence that would allow us to identify Draco as an Attic hero (unlike Solon), cf. the list in Kearns (1989), 139–207.

The myth is adduced as precedent for the existence of justifiable homicide. Thus, although the court was founded by men, the speaker still claims that its rules are based on a divine verdict.³⁴ This court too – and with it the authority of the divine verdict – would be overruled by Aristocrates' decree.³⁵ Demosthenes thus chooses a way to enhance the religious significance of the court by connecting it with a myth that also gave the Areopagus its air of solemnity and religious authority. He does not use standard material to amplify and exalt the institution, but plays up its religious significance, if he does not in fact invent it. Aristocrates' decree infringes rules justified on a much higher than human level.

The second indicator that confirms the authority of the courts is the oaths of the litigants, which are described in every eerie detail to distinguish them from an 'ordinary' (τυχών) oath. Before trials at the Areopagus the prosecutor (and also the defendant) stands (§68)

ἐπὶ τῶν τομίῳν κάπρου καὶ κριοῦ καὶ ταύρου, καὶ τούτων ἐσφαγμένων ὑφ' ὧν δεῖ καὶ ἐν αἷς ἡμέραις καθήκει, ὥστε καὶ ἐκ τοῦ χρόνου καὶ ἐκ τῶν μεταχειριζομένων ἅπαν, ὅσον ἔσθ' ὅσιον, πεπράχθαι. καὶ μετὰ ταῦτα ὁ τὸν τοιοῦτον ὄρκον ὁμωμοκῶς οὕτω πεπίστευται, ἀλλ' ἐὰν ἐξελεγχθῇ μὴ λέγων ἀληθῆ, τὴν ἐπιορκίαν ἀπενεγκάμενος τοῖς αὐτοῦ παισὶν καὶ τῷ γένει πλέον οὐδ' ὅτιοῦν ἔξει.

over the entrails of a boar, a ram, and a bull, and they must have been slaughtered by the necessary officers and on the days appointed, so that in respect both of the time and of the functionaries every requirement of solemnity has been satisfied. Even the person who has sworn this tremendous oath does not gain immediate credence; and if any falsehood is brought home to him, he will carry away with him to his children and his kindred the stain of perjury – but gains nothing.

The speaker is not simply referring to some social function of the oath, but sees it as part of a ritual, that is religious, context. The ideas of ὅσιον, ἐπιορκία, and ἐξώλεια are expressed much more strongly even than they were with respect to the heliastic oath in the *Parapresbeia* speech³⁶ and further intensified through graphic description and repetition. Something similar can be seen in the passage on the Palladium (§§71–3): references to sacrifices and purificatory procedures prescribed by the law affirm the appropriateness and venerability of the legal regulations. Should the laws be undermined by Aristocrates' decree, these admirable provisions would become pointless.

Thus the speech follows the general argument that Aristocrates' decree threatens to overthrow both the traditional courts of law and the approved procedures of

³⁴ Strangely enough, he speaks of gods (in the plural) adjudging the case. Just a few minutes after he had mentioned Athena he now returns to the convention not to single out gods. Perhaps this is another indication of how usual a *topos* the mythical trials were in connection with the Areopagus.

³⁵ The connection to the myth of Orestes is made only here, while it seems the court was normally more closely associated with Theseus, who was tried there after he had killed Sciron, Sinis, and the Pallantidae. This story, however, would have been of less use to Demosthenes. For the case involves mythical figures, but there was no way of connecting the verdict to the gods' will or their authority, cf. e.g. Et.Mag. s.v. ἐπὶ Δελφινίῳ, Paus. 1. 28. 10, Pollux 8. 119.

³⁶ Dem. 19. 71, 219–20, cf. Ch. 2.

dealing with homicide. The religious references work in two different ways: on the one hand, they demonstrate that Aristocrates' decree itself could expose the Athenians to the danger of acting impiously. They even incur the danger of having impure people around them. On the other hand, Euthycles underlines the legitimation of the traditional law courts by the gods and their solemnity. The extended mentions of mythical cases in which the gods were involved suggest that it would be an offence against the gods to change the laws.

What we see is a fusion of the religious and the legal sphere: the laws prescribe the procedure for the homicide trials (which are deeply concerned with religious matters, take the form of rites, and guarantee the purity of the city). At the same time, the laws themselves rest on a religious foundation since they have been approved by divine authority. The speaker presents this mutual relation and exploits it in either direction. However, the religious argument is not just reinforcement of the social/legal point, but is independent and can stand alone. The breach of sacred rules is not just an element in the general denigration of Aristocrates, but at the core of the allegation that the decree is illegal.

It may not be possible definitely to answer the question whether this distinctive feature is directly related to the particular ethos displayed in the proem. However, it is remarkable that reserve towards the people is accompanied by stress on the age and venerability of the homicide laws as well as on the worthiness of the Areopagus. The stability of the laws is not declared the touchstone of democracy, but their overthrow would affect much higher authorities; tradition has a higher rank than the functioning of the constitution. Thus the reluctance to address the people and the lack of democratic 'spirit' in the proem is at least consistent with the use of religion in the further course of the speech. Of course, it is possible that the ethos at the beginning of the speech has been chosen exactly for that reason: the homicide courts were to be at the centre of the legal argumentation and it was desirable to add a conservative flavour to the treatment of the Areopagus, so the speechwriter had to make the proem consistent with the following argumentation. However, there is no great difference between this relation of proem and argumentation and the idea that proem and argumentation are influenced by the actual (or at least displayed) character of the speaker. What is common to both theories is the decisive role one's ethos plays. The difference lies in whether it is chosen according to the intended use of arguments or vice versa. At all events, the speaker is not the same 'personality' or *persona* as the democratic politician Demosthenes. This individual case may now be checked against the other two major speeches written by Demosthenes for another person.

Consistency in its Extreme Form: *Against Androtion* and *Against Timocrates*

For *Against Androtion* and *Against Timocrates* there is no doubt that they were not delivered by Demosthenes himself. Some facts are irreconcilable with Demosthenes'

vita, and the speaker mentions his own name Diodorus (24. 64). In the two speeches Demosthenes wrote for him, consistency is carried to an extreme: not only does Diodorus refer to the first speech in his prosecution of Timocrates, he even repeats large parts of that speech almost verbatim³⁷ and admits that the dikasts who were present at the first trial will be familiar with his forthcoming attack on Androtion (24. 159).³⁸ His self-portrayal is consistent too, even though the number of dikasts who had heard him before may not have been very high. He himself leads a modest life (*μετρίως βεβιωκώς*, 24. 6) and is disgusted by the wickedness of skilled orators, among them Androtion (22. 37), with whom he seems to have a lasting feud. He stands up because he has got the opportunity to avenge the private injustice done to him and to do a service to the state (22. 1, 24. 8).

The earlier speech was delivered in a *γραφὴ παρανόμων* about a crown Androtion had requested for the *βουλή* of 356/5,³⁹ of which he was a member himself. On the prosecution side Diodorus acted as supporting speaker to Euctemon. So the main arguments with regard to the illegality of the decree had already been brought forward when he mounted the stage. Thus Diodorus can only fill in where Euctemon had left him something to say (§3). The speech falls neatly into three parts: the proem with the justification of his participation in the trial (§§1–4), the *anteoccupatio* against Androtion's prospective arguments (§§5–46) and finally the concluding invective (§§47–78).⁴⁰ The second part, though not dwelling on extended quotation and discussion of laws and the like, sticks very much to the matter at issue. The rhetoric of this section makes no use of religious references.⁴¹

In the proem Diodorus tells of a suit Androtion had filed against his (Diodorus') uncle for *ἀσέβεια* (§2). The uncle associated with Diodorus even though the latter had allegedly killed his father. While Demosthenes had called Midias *ἀσέβης* in the parallel case, Diodorus only laments that, had he been convicted, he would have become an outlaw and fugitive because of the allegation of an extreme act of impiety (*ἀσέβημα*). Not the false accusation is described as *ἀσέβημα* but the actual fact of parricide.

The version of the same events given in *Against Timocrates* (§7) differs considerably in two points, although the purpose of the passage is exactly the

³⁷ There is, to my knowledge, no detailed comparison of the two versions. The main difference is that Timocrates too is attributed a role in the tax-exaction in the later speech (e.g. §160).

³⁸ In fact he says 'at the trials of Euctemon', which can be taken to mean that he told the same stories in the two trials mentioned in Dem. 24. 9.

³⁹ On the date of the speech cf. Sealey (1955*b*), 117, Cawkwell (1962), 40–5 against Lewis (1954), 44.

⁴⁰ The abrupt end of the speech, without any peroration, has startled interpreters (cf. Vizie 1885, 19–20), but Blass (1887–98), iii/1. 262 n. 2 is able to show parallels.

⁴¹ There is one exception: when Diodorus speaks of the various procedures by which one and the same offence can be tried, he mentions the different ways of launching an *ἀσέβεια* trial as one of two examples (§§26–7). But even there the example is probably chosen because of the number of possibilities given to the accuser rather than its particular nature. For Diodorus himself asserts that the same applies to all other offences (where there were, in most cases, fewer ways of charging someone).

same: the justification of Diodorus' participation in the trial. First, instead of the uncle, Diodorus himself seems to have been accused; second, Diodorus does not describe how he would wander around in exile had he been falsely convicted of an ἀσέβημα. This makes it clear that the particulars in this passage that link the case with religious issues are not that decisive to Diodorus. The ἀσέβημα as such is not the centre of his interest; the pity evoked by the idea of his being unjustly expelled from home is likewise only supplementary. The differences between the two speeches rather suggest that the very idea of the false allegation of parricide has enough shocking potential to make the feud between the two plausible. Diodorus does not explicitly characterize this intrigue but insinuates a lack of respect towards religious categories in accusing him of such an ἀσέβημα without good cause.

This device to justify his prosecution by reference to irreligious conduct on Androtion's part may also serve as a preparation for the end of *Against Androtion*. After the proem and the pre-emptive refutation of a series of arguments for the defence,⁴² he takes up the denigration of his opponent's political record, which is combined with character assassination. First the exaction of war-tax, presumably in the mid 370s,⁴³ is criticized as the act of a tyrant-like oppressor. From §69 to the end Diodorus talks about the measures Androtion had proposed and then carried out in connection with the treasure of Athena: the repair of the processional vessels, the destruction of the crowns, and the production of phialai instead. He enhances the rhetorical effect by splitting up what was essentially one operation into three aspects and attaching the labels temple-robbery (ἱεροσυλία), impiety (ἀσέβεια), and theft (κλοπή) to it (§69). Thereby Androtion is labelled as someone who has infringed the rights of the gods in more than one way.

The political action in question here is that Androtion proposed a motion to melt down honorary crowns from which the leaves had fallen off and cast phialai from the material.⁴⁴ In what follows, the allegations are specified: the rationale for the entire project was fraudulent since golden leaves do not fall off; then Androtion embezzled some of the precious metal during the process of melting down, substituted less valuable phialai for the crowns, and made self-laudatory inscriptions instead of the patriotic ones originally attached to the crowns (§§70–6).

There is no reason to believe that Androtion's conduct was in any way objectionable. We know from inventories that disintegrated crowns were not a phenomenon restricted, as Diodorus claims, to violets and roses (§70) but

⁴² Cf. Vieze (1885), 8 (interpreting §4) 'Nihil igitur aliud hac tota oratione expectabimus quam confutationem'.

⁴³ Moscati Castelnovo (1980), 255 rightly points to Dem. 24. 175 as an indication that this measure was not carried through in the course or aftermath of the Social War.

⁴⁴ The question of whether there is any connection to the motion of 365/4 concerning the processional vessels remains unanswered, cf. Moscati Castelnovo (1980), 258 against Harding (1976), 191–2.

common.⁴⁵ They are a perfectly reasonable explanation for the acts of melting attested for several, mostly Athenian, sanctuaries.⁴⁶ Thus for some aspects of the procedure that is subject to Diodorus' attacks we know for sure that they occurred regularly and were free of any suspicion of impiety.⁴⁷ So it seems Diodorus' accusations do not have a sound basis since Androtion's actions were in agreement with common procedure. There is no need, therefore, to believe those allegations which Diodorus presents and for which there is no parallel evidence – that is, that Androtion did not have his accounts checked carefully and enabled himself to embezzle gold and silver.

The inscriptions originally attached to the crowns and the phialai emphasized devotion to Athens rather than to the gods.⁴⁸ Androtion is not explicitly accused of replacing pious texts by the self-promoting 'made under supervision of Androtion'. If Demosthenes has indeed, as it appears, partly invented the inscriptions *exempli gratia*,⁴⁹ he has not taken the opportunity to play up the religious connotations. Nevertheless he calls the new inscriptions 'impious and scandalous' (ἀσεβῆ καὶ δεινά, §72). There is more to the term here than just trite abuse to exaggerate the speaker's indignation: Diodorus later specifies that Androtion's name on the phialai is not just outrageous but a clearly definable sacrilege, because – according to him – it is that of a defiled person barred by law from entering the precincts of the gods (§73). By this device of Androtion's the name creeps into the sacred space where the person himself is denied entry. Of course the allegation of prostitution, which caused the pollution, is as much part of the usual invective as those we shall see in Aeschines' *Against Timarchus*, and nothing points to its having any firm ground. However, Diodorus depicts his opponent as polluted. The audience may have received the argument favourably because, even though the trial was lost in the end, he repeats the passage in *Against Timocrates* (§§181–6). Again, as in *Against Aristocrates*, Demosthenes uses the religious idea of ritual pollution in an unambiguous way, focusing on the defilement incurred, not on the contravention of sacral rules.

Diodorus then turns to the public appreciation of crowns versus vessels. Crowns are a manifestation of virtue, whereas vessels indicate nothing about their owner except a degree of wealth. Even here Demosthenes works with religious ideas, mentioning that the ancestors who erected the monuments of Athenian glory (two out of four are temples) neither tithed themselves nor 'fulfilled the imprecations of the enemies' by doubling the war-tax, but 'fulfilled the prayers of every sound-hearted man by establishing concord throughout the

⁴⁵ Linders (1989–90), 281 n. 4–6.

⁴⁶ Linders (1987), 116 n. 13, (1989–90), 282–3.

⁴⁷ Lycurgus takes such steps and is even praised for them in the honorary inscription preserved in Plut. *Mor.* 852 B, probably also in the lost part of *IG* ii². 457, cf. C. Curtius (1866), 111.

⁴⁸ Only one was marked as a gift to Athena by the text; the rest were 'to the Athenians' and the like, cf. 22. 72, 24. 180.

⁴⁹ Cf. Lewis (1954), 44–5.

city' (§77). Diodorus thus contrasts Androtion both with the idealized ancestors and with himself, who points out the right way of dealing with such matters. In addition, Diodorus claims that the ancestors banned people 'whose habits of life were what yours have always been'. This allusion to Androtion's alleged pollution is at the same time the transition back to his being unworthy of a public office. With unprecedented sharpness Androtion is accused of an unequalled act of impiety arising out of impurity (§78):

ἐγὼ μὲν γὰρ οἶμαι δεῖν τὸν εἰς ἱερὰ εἰσιόντα καὶ χερνίβων καὶ κανῶν ἀψόμενον, καὶ τῆς πρὸς τοὺς θεοὺς ἐπιμελείας προστάτην ἐσόμενον οὐχὶ προειρημένον ἡμερῶν ἀριθμὸν ἀγνέειν, ἀλλὰ τὸν βίον ἡγνευκέναι τοιούτων ἐπιτηδευμάτων οἷα τούτῳ βεβίωται.

I hold that the man who is to enter the sacred places, to lay hands on the vessels of lustration and the sacrificial baskets, and to become the director of divine worship, ought not to be pure for a prescribed number of days only; his whole life should have been kept pure of the habits that have polluted the life of this man here.

The term used to indicate purity (ἀγνεύειν) is not one that refers to physical cleanliness alone or that could be applied in any sense other than religious.⁵⁰ The reference to ritual purity is thus absolutely clear; any interpretation relies on the acceptance of common Greek ideas about pollution; without that acceptance, for example if inconsistency alone were focused on, the argument would not work.

Demosthenes writes a speech for Diodorus that consists for more than one-third of denigration not linked with the main charge but introduced as general criticism of Androtion's political activities (§47).⁵¹ One of the two offices he has held is consistently exploited for its religious implications. Demosthenes does not restrict himself to the charge of embezzlement nor does he use the word 'temple-robber' as mere insult. He adds that the act of embezzling sacred possessions was committed by someone already in a state of pollution. In contrast to *Against Aristocrates*, Demosthenes introduces both ideas not as related to the legal issue in the strict sense, but as charges against the person of Androtion.⁵²

The speech *Against Timocrates*⁵³ takes up all these issues. Androtion and two companions had gone on an embassy to Mausolus of Caria. On their way they

⁵⁰ Cf. Parker (1983), 12, 147.

⁵¹ We cannot say how much of Androtion's political career Demosthenes leaves out. The taxation and the office of superintendent (ἐπιμελητής) may have been his most important functions. No other significant office served in Athens is attested. In the early 350s he was governor of Arcesine, and in 355/4 (after *Against Androtion*, but before *Against Timocrates*, where it is mentioned in connection with incurring the debt that leads to the trial) he went on an embassy to Mausolus of Caria, cf. Harding (1994), 19–24.

⁵² Not least as a means of discussing Androtion's character, cf. Lanni (2005), 121–3.

⁵³ There are problems about the composition of the speech. In the middle section (§§110–54) the style is less polished than in the rest of the text. Moreover, the debts are said to be outstanding, whereas in the rest of the speech they have been paid. It is commonly assumed that the middle section is left over from an earlier version. Vizez's attempt (1885) to solve the problem is rejected by Kreuser (1888). A possible solution could be found in Dover's suggestion (1968a, 161–3) of cooperation between Demosthenes and Diodorus. Since the basic coherence of the entire speech has not been called into question and similar religious argumentation occurs in both parts, it will make no difference for the present purpose what the relation between the two sections is.

seized a trireme from Naucratis, but instead of handing the gain they made from it to the state they kept the money. Euctemon, who acts on Diodorus' side in both trials, obtained a verdict in court that declared them debtors to the state with an immediate obligation to pay their debts. When Timocrates had a law passed that would enable debtors to stay in freedom if they found a guarantor, this law was prosecuted as unconstitutional by Diodorus and Euctemon.

The function of the attacks on Androtion is partly different since he is no longer on trial himself but only the beneficiary if Timocrates' law is passed. Diodorus also expects him to act as supporting speaker. So the attacks on him have a triple function: they justify Diodorus' going to court (because of the long-standing feud against Androtion), they denigrate the one potential beneficiary of an acquittal and thus show positive consequences of the abrogation of Timocrates' law, and they devalue the supporting speaker's argumentation because that person is demonstrated to be unworthy of speaking to the dikasts. Moreover, Androtion is depicted as the mastermind behind the entire legislation. Thus the attacks against him are as important to Diodorus' argument as those against Timocrates. It is unclear whether this is just a strategic trick to provide more material for denigration (since the target has been playing a more prominent role) and to direct it against someone people know.

However, Timocrates receives his own share of criticism on religious grounds. The promulgation of the law was irregular, among other things because the festival peace (*ἑρομηνία*, §29) was breached. As regards the procedural requirements, Diodorus may be right that the introduction of the law during the festival of Cronia was incorrect.⁵⁴ However, he does not stop at that point, but argues that the law was an attack on the city (§31): 'Was it not atrocious that, when the state had granted to us individually security against any disagreeable or offensive treatment at that time, by declaring a religious holiday, the state itself should not have obtained such immunity from Timocrates?' So the festival peace is not disrupted by the irregular session of the *νομοθέται* but by the law as such. However, the notion is left at that; Diodorus does not attempt to suggest (or to press the point) that the disruption of the festival is in any form a provocation to the gods.

The intention and the consequences of the law are also exploited in their religious aspects: the public funds are robbed of the money owed by culprits such as Androtion. Diodorus distinguishes deliberately between consecrated and non-consecrated funds (*ἱερὰ καὶ ὅσα χρήματα*), which is a very common, if not official, formula in Athenian fiscal terminology. However, it is obvious that he does so on purpose in order to emphasize the idea of the gods, Athena in particular, being concerned. He could have mentioned the city alone, as he does several times, or spoken simply of 'the money'.⁵⁵ So by speaking of 'Athena

⁵⁴ It may at least have been objectionable, as the similar, indeed stronger, complaints of Aeschines (3. 67) show; cf. Mikalson (1975), 189–90.

⁵⁵ §§1, 14, 29, 89, 117, 205 (state), 60 (money).

and the city' he makes a choice of formula.⁵⁶ And he develops the idea by calling the sacred funds those of 'the goddess' or of 'the goddess and the heroes'.⁵⁷ This enables him to interpret the debts to the treasury as money withheld from the deity herself. He even goes so far as to say that Timocrates has proposed a law in favour of temple-robbers (*ιερόσυλοι*) because Androtion and his companions have 'robbed the temples of the 10 per cent due to Athena and of the 2 per cent due to the other gods' (§120). In this way he can classify the simple failure of payment as sacrilege. The climax of the religious interpretation of the debt as temple-robbery and of the invective is the idea that Androtion did not lapse into hubris and arrogance spontaneously. Rather, Diodorus says, he has been induced to embezzle the money by the goddess so that he and his accomplices should be ruined (§121). The example of the mutilators of the Nike, who caused their own doom, illustrates how Androtion's fate is allegedly sealed:⁵⁸

οἶμαι δέ, νῆ τὸν Δία τὸν Ὀλύμπιον, ὃ ἄνδρες δικασταί, οὐκ ἀπὸ ταυτομάτου τὴν ὕβριν καὶ τὴν ὑπερηφανίαν ἐπελθεῖν Ἀνδροτίωνι, ἀλλ' ὑπὸ τῆς θεοῦ ἐπιπεμφθεῖσαν, ἕν' ὥσπερ οἱ τὰ ἀκρωτήρια τῆς Νίκης περικόψαντες ἀπώλουντο αὐτοὶ ὑφ' αὐτῶν, οὕτω καὶ οὗτοι αὐτοὶ αὐτοῖς δικαζόμενοι ἀπόλουντο, καὶ τὰ χρήματα καταθείεν δεκαπλάσια κατὰ τοὺς νόμους ἢ δεθείεν.

By Olympian Zeus, gentlemen of the jury, I believe Androtion became the victim of this arrogant, overbearing temper, not by accident, but by the visitation of the gods, to the end that, as the mutilators of the statue of Nike perished by their own hands, so these men should perish by litigation among themselves, and should either make tenfold restitution, as the laws direct, or be cast into prison.

The motif that will appear in a vague form in the *Parapresbeia* speech is now pronounced more palpably: the crime is said to have been 'instigated' directly by the goddess in order to secure the perpetrators' removal from the public as a result of law suits, either by paying the tenfold recompense to the treasury of Athena or by incarceration. Scrutinized logically, the text poses two problems: first, the phrase 'by litigation among themselves' implies that Diodorus has no part in Athena's scheme, and we are not told of any trial between Androtion and his partners. Second, if the embezzlement is the result of the goddess's interference, it remains unclear why she pursued Androtion in the first place: the episode about the crowns and the secret vessels has not been touched upon (except for an allusion without reference to its religious faultiness, §8). The crudeness of the

⁵⁶ Samons (2000), 325–9 tries to diminish the difference between the status of the two funds. In fact, Diodorus' distinction shows that the difference was still felt in the 4th c. – not only because the penalty was so much higher for embezzlement from the sacred (i.e. consecrated) fund; cf. also Linders (1987), 116 for its status as in principle untouchable.

⁵⁷ e.g. §§8, 120. The ten eponymous heroes of the tribes had an extra fund. One source of income was a share of 2% of the fines incurred by debts to the state, cf. Dem. 58. 14, Schol. Dem. 24. 23.

⁵⁸ Nothing is known about the incident except for this report by the scholiast, who, however, by giving two different versions of the event indicates that the stories have been extrapolated from Diodorus' words.

passage's logic may be taken as an indication that it is only the culmination of the preceding charges of temple-robbery, a sign of the utter abjectness of Demosthenes' opponents. An argumentative connection with the main charge of inappropriate legislation is not detectable. Rather, it forms part of the characterization of Androtion as an antisocial and defiled enemy of the state and the gods, which is carried through more thoroughly than in *Against Androtion*. The allegation of temple-robbery also corresponds with that made later in the speech in connection with the melting of the votive offerings. When Diodorus comes back to that point, Androtion has already been shown not to shrink back from interference with temple treasures.

Androtion and Timocrates are thus united in the accusation, not for the same act, but the one as the original perpetrator and the other as his tool. Even though Timocrates did not take part in the irreligious acts, he is still involved and tries to prevent the evildoers from being brought to justice. The same fact, that Timocrates' law protects criminals, is pointed out earlier, where his integrity is called into question much more seriously. In that instance the beneficiaries are not temple-robbers but 'only' malefactors, parricides, and deserters (*κακοῦργοι, πατραλοῖαι, ἀσπράτευτοι*), who were excluded from public life by Timocrates' antagonist Solon (§104):

ὥστ' ἔμοιγε δοκεῖ (καὶ γὰρ εἰ φορτικώτερον εἶναι τὸ ῥηθισόμενον δόξει, λέξω καὶ οὐκ ἀποτρέψομαι) κατὰ τοῦτο αὐτὸ ἄξιον αὐτὸν εἶναι θανάτῳ ζημιῶσαι, ἵν' ἐν Αἰδου τοῖς ἀσεβέσιν θῇ τοῦτον τὸν νόμον, ἡμᾶς δὲ τοὺς ζῶντας τοῖσδε τοῖς ὁσίοις καὶ δίκαιοις ἔα τὸ λοιπὸν χρῆσθαι.

Therefore, in my judgement (and though you may think what I am going to say rather coarse, I will say it without hesitation), he deserves, on that very account, to be punished with death, so that he may pass this law in Hades for the benefit of the impious, and leave us who are still alive in the continued enjoyment of the laws that offend neither gods nor men.

Diodorus thus insinuates that Timocrates is directly involved in illegal and irreligious activities. The language is strong, even at the limit of what is tolerable, as is noted by Diodorus himself: he marks the statement as one that people may find inappropriate to the occasion. At the end of the contrast drawn between Solon and him, Timocrates is addressed as accursed (*κατάρατε*, §107), a word which is elsewhere employed as a term of abuse that has more or less lost its religious significance, but may in this instance be linked to Timocrates' expulsion to Hades.⁵⁹ In contrast to the following section, where Androtion is openly called a temple-robber, nobody is targeted personally. The attack is thus directed only against Timocrates and his function as legislator.

The recurrent theme of maltreatment of parents, most prominent in the insistence on *πατραλοῖαι* as profiteers from the law, may similarly have its

⁵⁹ Cf. Ch. 2 n. 93. In this speech this form of address occurs once more at §198, cf. below. Otherwise it is rare in Demosthenes (only in 18, 209, 244, 290), and not used in other classical prose texts, cf. Dickey (1996), 172.

motivation in the final attack.⁶⁰ Towards the end of the speech (§§190–203), Diodorus renews the allegation that Timocrates has sold his services and proposed his law to obtain money from Androtion. In the course of these allegations he condemns the defendant in terms unique or very strong for this speech. The greed which drove Timocrates to ‘hire himself out’ to Androtion is called ‘covetousness hated by the gods’,⁶¹ Timocrates is again addressed as ‘accursed’ (κατάρατε, §198). Moreover, Diodorus uses the invocation ‘by Athena’,⁶² which is not paralleled in Demosthenes’ speeches.⁶³ It must be more than just an emotional interjection, but rather a reference to the goddess whose wealth has been diminished in consequence of Timocrates’ greed.⁶⁴ In this way Timocrates is again linked to the ‘temple-robbers’. Finally, the earlier references to πατραλοῖαι are given a new significance by the remark that Timocrates himself maltreats his father, leaving him in prison for debts to the state, while he pockets the money earned by proposing the law (§200). Again, no religious terms are used in this context; so the religious notion is not made explicit. Only the description and the potential religious implications of irreverent treatment of the father, as well as the earlier grouping together of temple-robbers and parricides, may lead to an awareness of religious aspects to this complex.

This last instance is elusive and one may doubt whether it really evoked the impression of a transgression of religious regulations. At least, Demosthenes could have emphasized this aspect much more strongly, if he had intended to. However, even if one excludes allegations the religious connotations of which are not really obvious, the attacks against Androtion and Timocrates that are left suffice to illustrate the difference from the speeches Demosthenes delivered *in persona*: the allegations of temple-robbery concern different acts, but are applied to both; Timocrates alone is told to go to Hades, which is not only an allusion to the realm of chthonic gods, but equates him to the offenders down there, to whom he is supposed to legislate. The purity issue, in turn, is raised only against Androtion, who is also described as the object of divine intervention. In sum, Demosthenes includes a number of motifs in these speeches he does not use in a comparably outspoken and direct way when he is addressing an audience himself.

Conclusion

We can see that when Demosthenes acts as speechwriter, he uses religious references in a way that differs in presentation and interpretation from that in

⁶⁰ The motif is already used in §60, juxtaposed with treason and entering the Agora with unclean hands.

⁶¹ θεοῖς ἐχθρὰ αἰσχροκέρδεια, §195.

⁶² μὰ τὴν Ἀθηνᾶν, §199.

⁶³ νῆ or μὰ τὴν Ἀθηνᾶν in the *Corpus*: 26. 19, *Pr.* 46. 3. The combination of Zeus, Apollo, and Athena occurs at 21. 198.

⁶⁴ Cf. below, Ch. 5 on Lycurgus’ ‘calling Athena and the Mother to witness’.

the forensic speeches he would deliver in the 340s. The embeddedness of religion in society, which entails the representation of misbehaviour concerning religion as a form of antisocial behaviour, is not the predominant motif, as it is in the other speeches. Misdemeanour and defilement are not presented as something that must be viewed in their relation to the entire set of rules that guide the community. Instead, the gods and their realm are treated as a sphere in relation to which offences and contravention of rules are regarded as evil in themselves. Breaching the rules of the gods and dismissing them is not condemned because it is the correlate of a behaviour that is dangerous in inter-human relations, especially in Athens. Instead, Demosthenes lets the offences stand for themselves: Aristocrates challenges the gods by diminishing the importance of the courts they approved of; Androtion robs the goddess of her due share in the state's revenues. The latter is attacked personally, just as Timocrates is, whereas in *Against Aristocrates* it is mainly the decree the religious arguments are directed against. However, all three defendants are liable to punishment, and neither Euthycles nor Diodorus is required to explain how far the Athenians, as opposed to the gods, should be concerned by what their respective opponents did.

Demosthenes still does not describe the possible outcome: not a word is said about how these 'crimes' expose the city to the gods' wrath. There are limits Demosthenes cannot transgress, even though he does not have to pronounce these ideas himself. However, the limits are less narrow than when he faces an audience directly.

The ethos conveyed in each of these speeches varies in its relation to that of Demosthenes when he addresses the audience himself. Euthycles and Diodorus differ in their attitude towards the common people, Euthycles not refraining from exhibiting some distinctly aristocratic attitudes. Moreover, his speech is special in that the conservatism of his ethos is mirrored in the subjects on which he (or his speechwriter Demosthenes) has decided to argue. However, the use of religion for the argument by both Euthycles and Diodorus differs from that of the orator Demosthenes in that they both exploit religion as a source of material the applicability of which is not in the first line as an argument subsidiary to social inexpediency. We are justified, therefore, in assuming that the use of religious argumentation they make is one Demosthenes would not or could not use after the 350s because it would not have matched his self-portrayal as a politician. At the very least, the commissioned speeches of the 350s show that he was perfectly capable of incorporating religious arguments that cannot be interpreted as statements on the social standing of the opponent or his incompatibility with society. It is to himself that he allowed only a narrow range of exploitation of all. So Demosthenes' personal beliefs or incapacity cannot have been the reason why he did not use more explicit religious argumentation in the speeches he delivered in his own person as a politician.

5

Speeches Written by Other Orators

AFTER Demosthenes as speaker and speechwriter, I shall turn to three other orators: the speaker of *Against Andocides*, Lycurgus, and Aeschines. The selection is one of public forensic speeches with an obviously political background; so as regards the setting they are comparable to those considered so far. *Against Andocides* has been chosen as possibly the most idiosyncratic speech we have as regards the use of religion. Lycurgus and Aeschines are contemporaries, an ally and a rival, of Demosthenes. Two of Aeschines' works (*On the False Embassy* and *Against Ctesiphon*) are even the complements to Demosthenic speeches. The selection comprises speeches relying heavily on religious ideas. They thus show what possibilities existed if someone chose to let religion figure prominently. Moreover, it will become clear that those orators who rely heavily on this type of argument do so in most or all of their speeches.

THE SPEAKER OF *AGAINST ANDOCIDES*

The speech *Against Andocides* (the sixth in the corpus of Lysias' speeches),¹ written for a trial in the year 400, offers examples of arguments based most obviously on the exploitation of purely religious ideas. This focus on religion has frequently been condemned,² but few have tried to explain why the speaker can restrict himself to such a narrow range of arguments.³ However, the peculiar

¹ For the present purpose, it makes no difference whether Lysias wrote the speech or someone else. Dover's words (1968*a*, 82) apply: 'either VI was composed by someone other than Lysias, or it was composed by Lysias with careful regard for the known personality and style of the person who was going to deliver it.' What matters is thus that it follows the rules of ῥητοποιία. Lämmli (1935), 18–35 shows that there is no evidence for the text's having been changed after the trial and that it is probably a speech for the trial. Cataudella's arguments (1977 9, 51–2) for a date in 402—that is: that the text had been written as a pamphlet several years before the trial—are not convincing, above all because he cannot explain why Cephisius, who was later to become prosecutor, is already mentioned as such (§42).

² The speaker 'triefte von priesterlicher salbung': Wilamowitz (1893), ii. 74 n. 5; the speech is 'almost the only monument of religious fanaticism that has come down to us from antiquity': Burnet (1924), 9.

³ MacDowell (1962), 14 comes closest: '[The speech] contains no argued proof of Andokides's guilt; this will have been given by Kephisios in the main speech for the prosecution.'

focus and character of the speech can be understood if we assume that the speaker has a certain function within a 'team' of prosecutors: he concentrates on the religious arguments, in particular concerning the previous history of the case, covering the profanation of the mysteries and the mutilation of the Herms in 415. He is qualified to take over that part of the prosecution on the basis of the religious authority he can claim because of his (alleged?) affiliation to the clan of Eumolpidae. Other aspects of the case are not his concern, but have been or will be dealt with by his fellow prosecutors.

The Background of the Trial

In the year 415 Andocides had been imprisoned on the allegations of the profanation of the mysteries and the mutilation of the Herms.⁴ By denouncing some of his accomplices he was exempt from punishment, though this more or less implied that he was indeed guilty of the charges made against him. So when a decree proposed by one Isotimides was passed saying that people guilty of *ἀσέβεια* were barred from the Agora and the sacred precincts, Andocides was liable to it. He went into exile, where he stayed until 402 (except for two failed attempts to return). Even though his past must have been notorious among the Athenian public, he was able to enter politics and to hold offices on his return.

However, in 400 he was accused by Cephisius of entering the sanctuary of Eleusis, thus violating the decree of Isotimides; the procedure was *ἐνδειξις*, a special form of prosecution against people arrogating rights which they had forfeited. A few days before the trial took place, the additional charge was made that Andocides had placed a suppliant-branch on the altar of the two goddesses. As this was forbidden during the time of the mysteries, Andocides faced the death penalty. The religious character of the trial is marked by the facts that the *βασιλεύς* had led the inquiry and the jury consisted exclusively of initiated citizens (Andoc. 1. 29). The prosecution claimed that the offences entering the sanctuary and probably also placing the branch constituted impiety.⁵ Andocides' offences of 415 had relevance only in that he was not liable to the decree of Isotimides if he could show that he had not taken part in any of them. For the allegation concerning the suppliant-branch that issue had no relevance.

In the trial, Andocides attacks his opponents individually. From these passages (Andoc. 1. 92–100, 132–6) we learn that four men shared in the prosecution. Cephisius, being the one who had indicted Andocides, must have delivered the first speech. Since in the extant plea he is mentioned by name, it is clear that the speaker is one of the three supporting speakers Meletus, Epichares, and Agyrrhius. Further obvious clues to the speaker's identity are lacking.⁶ *Against*

⁴ For the background cf. MacDowell (1962), 3–5.

⁵ Entering the sanctuary: Andoc. 1. 132; placing a branch on the altar is a breach of a (sc. sacred) law: Andoc. 1. 113.

⁶ For some indications cf. Excursus, p. 149.

Andocides is not complete, but a section of unknown length is missing at the beginning, and near the end there is another lacuna.⁷

The content of the speech as we have it is largely uniform: it mainly deals with Andocides' being in a state of impiety as the result of impious acts and of the consequences of this state. The acts themselves are not further described, but knowledge of them is assumed. A large part consists in a narrative of Andocides' life between 415 and 402. Only one section (§§35–42) does not treat religious matters.

The nature of the speech as a supporting speech implies that it was probably much shorter than Cephisius' (and Andocides' defence). For the principal plea of the prosecution will have contained the narrative and set out the events of 415 and all Andocides' other offences as well as the basic arguments. However, it is obvious that the speaker does not even treat all instances of 'impiety' covered by this case. The summary of Andocides' deeds runs (§§51–2):

οὗτος γὰρ ἐνδὺς στολὴν μιμούμενος τὰ ἱερὰ ἐπεδείκνυ τοῖς ἀμύητοις καὶ εἶπε τῇ φωνῇ τὰ ἀπόρρητα, τῶν δὲ θεῶν, οὓς ἡμεῖς νομίζομεν καὶ θεραπεύοντες καὶ ἀγνεύοντες θύομεν καὶ προσευχόμεθα, τοὺτους περιέκοψε. καὶ ἐπὶ τούτοις ἱέρειαι καὶ ἱερεῖς στάντες κατηράσαντο πρὸς ἐσπέραν καὶ φοινικίδας ἀνέσεισαν κατὰ τὸ νόμιμον τὸ παλαιὸν καὶ ἀρχαῖον. ὠμολόγησε δὲ οὗτος ποιῆσαι. ἔτι δὲ παρελθὼν τὸν νόμον ὃν ὑμεῖς ἔθεσθε, εἶργεσθαι τῶν ἱερῶν αὐτὸν ὡς ἀλιτῆριον ὄντα, ταῦτα πάντα βιασάμενος εἰσελήλυθεν ἡμῶν εἰς τὴν πόλιν, καὶ ἔθυσεν ἐπὶ τῶν βωμῶν ὧν οὐκ ἔξῃν αὐτῷ καὶ ἀπήνητα τοῖς ἱεροῖς περὶ ᾧ ἡσέβησεν, εἰσῆλθεν εἰς τὸ Ἐλευσίνιον, ἐχερνήψατο ἐκ τῆς ἱερᾶς χέρνιβος.

This man put on a ceremonial robe. He mimicked the sacred rites and revealed them to those who were not initiates. He gave voice to words that must not be spoken. He mutilated the gods whom we worship, and to whom we sacrifice and pray, honouring them and purifying ourselves. This was why priestesses and priests stood facing the west and cursed him, shaking out their purple robes according to ancient and ancestral custom. He has admitted his actions, and is still breaking the law you established, that he should be excluded from the sanctuaries as an evil spirit. He has entered our cities, having broken all these restraints. He has sacrificed on the altars where he was not allowed to do so. He has gone to the sanctuaries, which were the subject of his impiety. He has entered the Eleusinium and washed himself in the holy basin.

He does not mention the suppliant-branch, nor is it referred to anywhere else in the speech. The reasons for this may be manifold: the speech as it is may just be a draft written before the incident occurred. For the actual delivery it was altered and the incident was mentioned. It could, however, also be the case that, for some unknown reason, another of the prosecutors was to deal with this offence.⁸ Since

⁷ The lost end of Lys. 5 and the start of Lys. 6 added up to two folia, that is (according to Blass 1887–98, i. 563) twice the length of §§41–9 (a bit more than two pages of the new OCT). How this space was divided between the speeches remains unclear. The rest of the speech *For Callias* may well have taken most of it: the speaker does not seem to be close to finishing his statement when the text breaks off. The lacuna after §49 is due to the loss of one folium.

⁸ The plural *κατηγόρησαν* in Andoc. 1. 110 does not mean that this point must have been dealt with in more than one speech, but may be a general reference to the board of prosecutors. The same

Andocides can afford to refer to the branch more or less without discussing the evidence for the act itself (he talks only about the subsequent inquiry), one might also assume that his guilt was not manifest enough to be exploited in the way the speaker does with Andocides' past offences. Besides, another allegation that was brought forward by the prosecutors and that has religious implications is not mentioned in the speech: Andocides says he was accused in his opponents' speeches of having denounced his father (Andoc. 1. 19). Maltreatment of one's parents was an act of impiety.⁹ However, in *Against Andocides* as we have it nothing is left of this charge apart from a short 'while in prison, he informed against his own relatives and friends' (§23): this shows that the topic has probably been mentioned before in the trial, but makes it unlikely that the same speaker paid much attention to it and used it to provoke outrage against Andocides earlier in his speech. So the passing over of these parts of the accusation might be another indication of this speech's particular role within the overall strategy of the prosecution and the speaker's careful selection of what he was going to treat.

One argument that could be raised against this view of task-sharing in the trial is that the trial was of a religious nature. So all the prosecution speeches would have had this tendency and *Against Andocides* would not be special. This argument is not cogent. Extant speeches in trials on religious charges allow surprisingly little space to religious arguments – with the exception of this one.¹⁰ Andocides too, responding, among others, to the extant plea, does not seem to be concerned too much with the religious aspects of the case. Much of his speech is taken up by the establishment of facts regarding both the profanation of the mysteries (§§11–33, with the last five paragraphs concentrating on religion in an *amplificatio*) and the mutilation of the Herms (§§34–70). Religious institutions are frequently mentioned, but rarely with reference to their specifically religious character. By contrast, Andocides even contrasts his own argumentative style with that of his accusers (most probably with the extant speech), saying (§29):

ἀποδέδεικται μοι ὡς οὔτε ἡσέβηκα οὔτε μεμήνηκα περὶ οὐδενὸς οὔτε ὠμολόγηκα περὶ αὐτῶν, οὐδὲ ἔστι μοι ἀμάρτημα περὶ τῷ θεῷ οὔτε μείζον οὔτ' ἔλαττον οὐδέν. ὅπερ ἐμοὶ περὶ πλείστον ἔστιν ὑμᾶς πείσαι. καὶ γὰρ οἱ λόγοι τῶν κατηγορῶν ταῦτα τὰ δεινὰ καὶ φρικώδη ἀνωρθίαζον, καὶ λόγους εἶπον ὡς πρότερον ἐτέρων ἀμαρτόντων καὶ ἀσεβησάντων περὶ τῷ θεῷ οἷα ἕκαστος αὐτῶν ἔπαθε καὶ ἐτιμωρήθη.

phrase is used in §137, when Andocides talks about the significance of his sea-voyages. This argument may be unlikely to have been raised in any of the other speeches. The type of argument mentioned in §113 sounds very close to those of Lys. 6. So the most likely theory is that we have an earlier version of the speech, before the incident took place.

⁹ Cf. below, Ch. 8 with n. 72.

¹⁰ Other such speeches are Lys. 5 and 7, in which there is no religious argumentation at all, and Lys. 30, in which the question is dealt with whether it is impiety to follow the old regulations for public sacrifices or the new ones (without mention of the gods etc.). Hyp. 3 is from an *εἰσαγγελία* concerned with a mission to receive divine signs about what *πόλις* a certain piece of land belonged to. Allegations remain very much on a political level.

I have demonstrated that I have neither committed impiety nor informed on anyone nor made a confession about them, nor am I guilty of a single offence, great or small, concerning the two goddesses. It is very important for me to convince you of this. For the speeches of the prosecution wailed on about those grisly horrors, and they told stories of how other people previously committed offences and impieties concerning the two goddesses, and what punishment each of them suffered.

Moreover, as in most *γραφὰὶ ἀσεβείας*, so in this case the charge of *ἀσέβεια* was linked to wider political issues: the question of whether the decree of Isotimides was applicable to Andocides in the first place is just one aspect of the present trial. Of equal importance were the doubts about the validity of that decree after the revision of the laws by Nicomachus and the amnesty of 403. The relevance of these issues is confirmed by their prominence in Andocides' speech. In §§71–109 he treats them and links them to the dangers for the cohesion of the city, if he is put to death. Only the oaths of reconciliation from 403 recur with some frequency.¹¹ Political issues are also addressed in the attack on Agyrrhius and the epilogue (§§132–6, 140–50). There he even adds considerations of a general nature about what the Athenians will gain from his acquittal—again no advantages concerning the relationship between Athens and the gods. What is left is mainly the refutation of the arguments which claimed that the goddesses infatuated him into placing the suppliant branch and thus being put to death (§§113–14) and an argument on his sea-voyages (§§137–9): in all these years he did not suffer shipwreck—allegedly a strong indication that the gods did not find him guilty. Both times he answers arguments that are based on religious points in the same form.¹²

Even *Against Andocides* does not miss out the merely political aspects of the trial: the speaker treats some of them without any explicit references to impiety (not mentioning more than the 'mistakes' of Andocides, §§39, 41). Instead, he uses a mainly civic-patriotic approach blaming Andocides for having thrown the city into confusion and not taking part in her liberation from the Thirty (§§35–41).

Other political aspects, however, are mentioned but not treated in isolation: instead, the speaker counters them (partly implicitly) by introducing religious notions or consequences. As for the verdict in general, he warns the jury quite early in the extant text not to acquit Andocides because then the goddesses would punish them as well as Andocides himself (§3). More particularly, the speaker transfers the problem of Isotimides' decree to a religious sphere: for him, it is completely irrelevant if the decree is still in force, since Andocides must not be allowed to enter anyway. He cites Pericles as an authority: in the case of a person

¹¹ On these oaths cf. Ch. 8.

¹² A similar refutation (Lys. 6, 16, concerning Andocides' exclusion from sanctuaries in other cities) is found in §132. The only strong religious argumentation not responding to the prosecutors' speeches is found in connection with the attack on the mastermind Callias §§124–31.

committing impiety judgment in accordance with the written, that is 'civic', laws is not enough; rather, the unwritten laws, the regulations of the Eumolpidae, must be followed, too (§10). So even if Andocides were right to claim that the decree of Isotimides had been quashed and amnesty granted in the meantime, one would still have to bar him from the sanctuaries for the goddesses' sake. A substantive political issue of the prosecution is dismissed in favour of the idea of impiety and divine interference.

The issue of the amnesty, too, is implicitly addressed: the numerous references to divine punishment can be interpreted as hints that the time of punishment is still to come. In one place, his allusion to the amnesty is more direct (§33):

μη γὰρ οἴεσθε, ὦ ἄνδρες δικασταί, εἰ ὑμεῖς βούλεσθε τὰ τούτῳ πεποιημένα ἐπιλαθέσθαι, καὶ τοὺς θεοὺς ἐπιλήσεσθαι.

Do not expect, men of Athens, if you choose to forget the things that were done by this man, that the gods will forget them as well.

The speaker avoids the technical term *μνησικακεῖν*, but the idea is expressed clearly that the Athenians, whatever they do about other sorts of offences, must not leave impiety unavenged.

So, what we have in this speech is a consistent exploitation of some religious aspects of the case. That means the speaker not only uses religious arguments, but almost restricts himself to them. Legal issues are not what he is concerned with. However, these aspects were of major importance to the case and we can be sure that they were dealt with by the prosecution. Therefore, we can say the speaker focuses on religious argumentation – at least for this trial, maybe also for others of which we know nothing. Within the group of prosecutors he takes over a particular part of the argumentation, or even a particular role. It is not the case that he 'joins in the prosecution because he possesses specific knowledge without which the attack on the defendant would be incomplete'¹³ (as other supporting speakers may). Rather, he presents no specific¹⁴ knowledge but religious commonplaces, though in an extreme form. Any other speaker could, in principle, have said what he says. What he does is 'act' as the religious prosecutor, who presents the religious norms and demonstrates the dire consequences of an acquittal.

The only pieces of information we get about the speaker are that he is one of Meletus, Epichares, or Agyrrhius and that his grandfather Diocles was the son of

¹³ Rubinstein (2000), 142.

¹⁴ The example at the start of the text is said to have been told by a hierophant to 'many of you' (§1) – this is of course a frequent way of suggesting a widespread fame for something that is known only to few (if at all correct), but it is something anyone *could* know – as opposed to, say, a family history in the case of an inheritance trial. The same is true for Pericles' dictum (§10). Only the speaker's grandfather (§54) might have been a source not everyone would have the opportunity to listen to. However, none of the three 'insider stories' is directly related to the case of Andocides.

the hierophant Zacorus.¹⁵ The last detail links him to the family of the Eumolpidae and it may explain why he was chosen for this role in the trial: being of Eumolpid origin he can contribute the religious authority of the priestly clan that controlled the Eleusinian mysteries.¹⁶ Not only can he refer to statements of members of the clan three times (§§2, 10, 54), but he has a reason why he is concerned about the punishment of the man who has allegedly mocked and profaned the cult administered by his clan. And simply as a member of the clan, his voice might be listened to in arguments that would sound ridiculous or superstitious if used by an 'ordinary' person. He need not really have acted on behalf of the Eumolpidae, but it might have been a pretence that he 'represented his rôle as that of voicing the grievances of a particular group, that of the priestly families of Eleusis.'¹⁷

The roles in the prosecution were thus probably specific to some of the speakers. It is in line with our knowledge of principal and supporting pleas that Cephisius probably had to launch the most general attack. And it is unlikely that another speaker would play the religious card quite as much as this one did.¹⁸

Religious Concepts Exploited in the Speech

As for the individual arguments, it is apparent that we find many motifs Demosthenes does not exploit in a similar way. In the following I shall present examples of arguments based on pollution, the description of gods as agents, in particular when punishing offenders, and the necessity of atonement.

In several places, the speaker alludes to the idea that Andocides is 'impure' and must be kept away from the delicate parts of the city. What could be read as an exclusion from public life, that is social exclusion, is interpreted by the speaker as a religious precaution: he hints at other cities that forbid entrance to their temples to those who have committed impiety in Athens (§16):

φασὶ δὲ καὶ τῶν Ἑλλήνων πολλοὺς διὰ τὰ ἐνθάδε ἀσεβήματα ἐκ τῶν παρ' αὐτοῖς ἱερῶν ἐξείργειν. ὑμεῖς δὲ αὐτοὶ οἱ ἀδικηθέντες περὶ ἐλάττονος ποιείσθε τὰ παρ' ὑμῖν νόμιμα ἢ ἔτεροι τὰ ὑμέτερα.

¹⁵ Nothing more is known about either of them, cf. *PA*A 332685, 460110. The hierophant is the highest priest of the Eleusinian mysteries. To this office only members of the clan of Eumolpidae could be elected, cf. e.g. Schol. Aeschin. 3. 55a, Ael. Arist. 22. 4.

¹⁶ It is commonly assumed that he is himself a Eumolpid, which is not certain because a *πάππος* can be either the paternal or the maternal grandfather, cf. LSJ s.v. It is, however, sufficient to state that the speaker at least insinuates that he is a Eumolpid.

¹⁷ Rubinstein (2000), 142. The Eumolpidae expressed similar concerns when Alcibiades, another of the alleged profaners of the mysteries, pushed his return to Athens, cf. Thuc. 8. 53. 2.

¹⁸ Perhaps it is even possible to explain the surprisingly malicious remark (§42) about his 'colleague' Cephisius (cf. Blass 1887 98, i. 565) as a manifestation of his moral authority. Cephisius' life might indeed not have been impeccable. So it was possible to prevent the defendant from exploiting this fact by having someone with the prestige of the Eumolpidae confirming that this was not relevant.

They say that many of the Greeks exclude people from their temples because of impious actions committed here at Athens; but you, who are yourselves the victims of the offence, are paying less attention than other people to your own law.

Both the definition of the offences as ἀσεβήματα and the fact that it is not Andocides' own city that bans him indicate religious rather than social connotations. For in the first place, the perpetrator does not belong to the respective πόλις, so it is not the citizens who are protected (because to this end Andocides could be banned from the city as such) but the sanctuaries themselves. Unlike the exclusion of those disenfranchised, this is not a social punishment, but one that targets Andocides' impurity. At the end of the speech, in the summary quoted above, the context of pollution is made unambiguous: Andocides has returned to Athens and entered the places he was banned from as an ἀλιτήριος. He thus transgresses the laws, but his act had a greater significance in that he took part in the ritual and performed the rites he himself had violated. The speaker becomes more explicit by mentioning Andocides' use of the lustral water (§52), the purpose of which is nothing but cleansing.¹⁹ The reason why the speaker gives this such prominence²⁰ can only be that via the water Andocides' pollution is spread physically in the city. His polluting the water removes the purity required in the procedure. The motif of defilement is revealed more and more. The final step in this process is the open statement that Andocides, being an ἀλιτήριος, is to be disposed of as φαρμακός, a kind of scapegoat (§53):

ποῖον φίλον, ποῖον συγγενή, ποῖον δημότην χρὴ τούτῳ χαρισάμενον κρύβδην φανερῶς τοῖς θεοῖς ἀπεχθέσθαι; νῦν οὖν χρὴ νομίζειν τιμωρουμένους καὶ ἀπαλλαττομένους Ἀνδοκίδου τὴν πόλιν καθαίρειν καὶ ἀποδιοπομπεῖσθαι καὶ φαρμακὸν ἀποπέμπειν καὶ ἀλιτηρίου ἀπαλλάττεσθαι, ὥς ἐν τούτων οὗτός ἐστι.

What friend or relative or deme member needs to do a favour secretly to my opponent and openly incur the hatred of the gods [sc. by voting for his acquittal]? You should realize that by punishing Andocides and getting rid of him, you are purifying the city and freeing it from pollution, driving away the scapegoat, and getting rid of an evil spirit because this man falls into that category.

The language of these last sentences is openly concerned with ritual pollution.²¹ The speaker does not just ask the jury to cast Andocides out as an unworthy member of society, but makes him an obstacle to the proper working of Athens' religious life. Only by conjuring him away as a φαρμακός can the city be cleansed. The word is used in a way that suggests that Andocides' role is even

¹⁹ Cf. Burkert (1985), 77.

²⁰ It is not only the last element in the climactic description of Andocides' intruding in the sacred areas of the city. It is also the only detail in an otherwise vague 'narrative'.

²¹ The word ἀποδιοπομπεῖσθαι clearly denotes some kind of purification. It is not attested as a technical term in rituals, but it occurs twice in Plato in the same combination with καθαίρειν (*Cra.* 396 E 3, *Leg.* 877 E 9), which makes it likely that it is somehow part of formulaic language. Plato also speaks of ἀποδιοπομπήσεις (*Pl. Leg.* 854 B 7 – priests are mentioned in this context in 877 D 5, cf. also *Tim. Gramm.* s.v. ἀποδιοπομπεῖσθαι), which might be the name of the relevant ritual.

more serious than that: by his exile Andocides will not carry with him the guilt and defilement of others and thereby remove it. Rather, what he takes with him is the pollution he himself has caused in the city by his earlier offences as well as by his spreading pollution as an active citizen after 402.

The second major motif is that of the gods' intervention. This type of argument can take one of three different forms: the gods can punish the wrongdoer, they can punish those who obstruct his punishment that is: the jurors or, in the case of an acquittal, even the city and they can induce the wrongdoer to do something that will lead to his punishment.

The first form can be illustrated from the example at the start of the extant text. A man stole a horse from a temple (presumably one of Demeter and Persephone) and then died of anorexia (§1). It is not expressly stated that the goddesses have interfered, but soon afterwards the speaker admonishes the jurors not to show pity to Andocides, 'because you know how actively the two goddesses take vengeance on wrongdoers' (§3). The fact that Andocides has not suffered the ultimate punishment is explained by the archaic belief that the gods strike late, perhaps only in future generations.²² They are, however, still active in the meantime, sending terrors and dangers (§20):

οὕτε γὰρ ὁ θεὸς παραχρῆμα κολάζει (ἀλλ' αὖτη μὲν ἐστὶν ἀνθρωπίνη δίκη) πολλαχόθεν δὲ ἔχω τεκμαιρόμενος εἰκάζειν, ὁρῶν καὶ ἑτέρους ἡσεβηκότας χρόνῳ δεδωκότας δίκην, καὶ τοὺς ἐξ ἐκείνων διὰ τὰ τῶν προγόνων ἁμαρτήματα ἐν δὲ τούτῳ τῷ χρόνῳ δέη πολλὰ καὶ κινδύνους ὁ θεὸς ἐπιπέμπει τοῖς ἀδικοῦσιν, ὥστε πολλοὺς ἤδη ἐπιθυμήσαι τελευτήσαντας τῶν κακῶν ἀπηλλάχθαι. ὁ δὲ θεὸς τέλος τούτῳ λυμηνάμενος τῷ βίῳ θάνατον ἐπέθηκε.

The god does not punish instantaneously (that sort of justice is characteristic of humans). I find evidence for this in many places: I see others who have committed impiety and have paid the penalty much later, and the descendants paying the penalty for the crimes of their ancestors. In the meantime the god sends much fear and danger to the unjust, so that many of them are keen to die prematurely and be rid of their sufferings. At length, the god imposes an end on their life, after ruining it in this way.

In the same way, Andocides' restless and unsuccessful life since his alleged crimes in 415 is explained as part of the gods' vengeance on him (§§30–1).²³

Since, in the presentation of the speaker, the defendant's guilt is undoubted, the jurors are said to confer guilt on themselves if they acquit him: they know that the gods punish wrongdoers, so 'everybody should expect that the same will happen to himself and to other people' (§3). Indeed, if the jurors authorize Andocides' recall by their verdict, they will deprive the gods of their vengeance.

²² e.g. Solon *IE*² 13. 31–2, Hdt. 1. 91.

²³ For the ways in which the speaker tries 'to show how the gods hate Andokides for his impiety' cf. Furlley (1996), 106–7. Curiously, even though the speaker asserts in the same passage that the present trial has been made possible by 'the god', he does not seem to regard a possible conviction as part of divine vengeance.

In this case, they will be guilty of the same *ἀσέβημα* as Andocides himself (§13). Finally, in the passage on pollution, he warns the jurors not to incur the enmity of the gods for the sake of a favour to the defendant (§53). Thus it is suggested that both the guilt and the gods' wrath (and punishment) would spread to the jurors, if they did not take the opportunity to condemn Andocides.²⁴

The third way in which the gods are described as active is similar to the direct infliction of punishment on the wrongdoer: they can also drive him to actions that result in suffering and death. The god whom Andocides has spurned by taking the risk of entrusting himself to the sea enticed him to come back and stand trial (§19). Punishment is thus inflicted by the jury, but it is made possible by the interference of the god.

The active role the gods play in the punishment of Andocides and other perpetrators, as it is depicted by the speaker, may seem extreme. It is one that can be found mainly in tragedies and Herodotus.²⁵ However, even in fourth-century prose these beliefs are not unparalleled. While Demosthenes, as has been seen, does not spell out the intervention of the gods as consequence of an unjust verdict,²⁶ the motif occurs with similar explicitness in Lycurgus (§148). Leading astray or sending madness upon someone is frequently mentioned, sometimes as a fact, sometimes as something people believe happens.²⁷ Even direct punishment seems to be a far from unusual idea.²⁸

The third important motif in the speech is the need for atonement. The Athenians have to re-establish their good relationship with the gods or at least to prevent it from worsening. This is done mainly by bringing Andocides to justice. The individual *dikast* will incur the enmity of the gods if he votes for the defendant (§53), whereas the state as a whole acts in a way displeasing to the gods if Andocides is allowed to play a public role, perhaps even in ways that concern religious life (§33):

εἰς τοσοῦτον δὲ ἀναίσχυντίας ἀφίεται ὥστε καὶ παρασκευάζεται τὰ πολιτικά πράττειν καὶ ἤδη δημιουργοεῖ καὶ ἐπιτιμᾷ καὶ ἀποδοκιμάζει τῶν ἀρχόντων τισί, καὶ συμβουλεύει εἰς τὴν βουλὴν εἰσιῶν περὶ θυσίων καὶ προσόδων καὶ εὐχῶν καὶ μαντείων.

²⁴ An important difference to the *Paraprosbeia* speech is that there the *dikasts* become 'guilty' by disregarding the heliastic oath (cf. Ch. 2), in this passage by not condemning a guilty defendant.

²⁵ Cf. e.g. Aesch. *Ag.* 367–72, Soph. *Aj.* 51–3 (an action that leads to Ajax' suicide), Eur. *Hipp.* 21, Hdt. 1. 34. 1. 'It recalls the two-level structure of theatrical narrative whereby human actions and motivations constitute one level of reality, but there is another, the divine plane, which is ultimately responsible for the lower level, even if only intermittently visible': Furley (1996), 107.

²⁶ Dem. 19. 257, cf. above, p. 73.

²⁷ The case of the god's making Philip meddlesome (Dem. 4. 42) can be counted as an instance of this kind, as well as Dem. 24. 125, whereas Dem. 9. 54 speaks only of the fear of such intervention, cf. Dover (1974), 136–7.

²⁸ e.g. Aeschin. 2. 158, Antiph. 2. 1. 3. Direct intervention is also perceived in the defeat of the anti-Spartan allies in Xen. *Hell.* 4. 4. 12; this might be linked with the Corinthian sacrileges in 4. 4. 2–3.

He has reached such a level of shamelessness that he is preparing for a political career. He has already delivered public speeches; he has made accusations; he has disputed the qualification of some of the archons; and he enters the chamber of the council and gives advice about sacrifices, processions, prayers, and oracles.

In his final appeal for a conviction, the speaker – referring to his grandfather's, the hierophant's, request – says that 'as far as concerns the gods' the jurors should consider what fate is befitting the perpetrators of an impious act (§54). He leaves open whether this is to be done to avoid the gods' wrath against the individual or the collective. To judge from what he said so far in his speech, it is probably both.

It is not possible strictly to separate these three strands of argument from each other, but the concepts overlap. Impurity, divine punishment, and atonement are interlinked in that the acts that provoke the gods are also a source of impurity: impiety both defiles the wrongdoer and enrages the gods.²⁹ Therefore, cleansing the city is a way of appeasing the gods – and it is meant to prevent the gods from exacting punishment. However, it is perfectly possible to mention the one without the others.

Thus in *Against Andocides* we have a whole complex of arguments that do not occur in such a strong form (if at all) in Demosthenes' speeches. The very idea that is behind most of the argumentation in the speech, the involvement of the gods in human affairs, is what is missing almost completely in the public speeches of Demosthenes. This difference can be explained partly by the nature of the charges in the Andocides trial, that is impiety of various kinds, but this particular content is not a sufficient reason for the lack in Demosthenes: on the one hand, one can, as we shall see, include such argumentation in merely political forensic speeches and, on the other hand, Demosthenes does not exploit the religious significance of acts the religious character of which he actually alludes to.

However, one should not overlook the motifs both speakers exploit: for *Against Andocides* also presents some of the social and political implications of the case. Andocides has made himself an outcast by his acts, not only because he is defiled as a result and as such dangerous and odious. There is also a merely social stain as well as damage to the city unrelated to religious matters. In mentioning the Agora and the temples as well as the public offices from which Andocides is banned, the speaker (unlike Demosthenes) focuses on the religious importance and the notion of pollution. But when describing the possible reaction of other communities to Andocides as the official administering the mysteries he rather implies the loss of Athens' good reputation (§5). Andocides himself is someone who, in his years in exile, has annoyed many states and acted in a deplorable way as a flatterer of kings. More than that, he harms his friends and does good to his enemies (§§6–7). This description is preceded by references to his ἀσεβήματα, but in itself it does not require any notion of impiety to depict

²⁹ Cf. Parker (1983), 145–6.

Andocides as antisocial. Andocides is also said to have been ‘banished³⁰ from the gods here [or ‘this country’s gods’], banished from his own city, banished from the place he had turned to first’ (§28). The remark that he was banished from the gods does not denote much more than just his utter rejection by the people. At least its religious connotation seems far less strong than in Lycurgus’ description of Leocrates deserting the Athenian gods – as will be shown later.

These examples show that this speaker, too, knows how to use religion in a sense that emphasizes its social significance and the argumentative force of the rhetoric of civic cohesion. He combines the purely religious pollution and wrath motifs with the socio-political categories also used by Demosthenes. Another difference, however, between these two orators lies in their use of authorities: *Against Andocides* gives more prominence to tradition, precedents, and authoritative statements. Three times Eumolpidae are cited: once as a warranty for the truth of an episode that includes divine vengeance (§1), twice as sources of rules concerning the treatment of wrongdoers (§10, 54). In one case, the unlimited authority of the Eumolpidae is expressly claimed (§10, where Pericles is mentioned in addition as the one who insists on the application of these unwritten laws). Similarly, the speaker refers to τὰ πάτρια as a norm which cannot be upheld if Andocides stays unpunished (§8), and thus demands that the jury convict him. However, the only examples or precedents are that of the unnamed horse thief at the start and of Diagoras the Atheist; at least in the extant texts the speaker does not go back to myths.

Another particularity, as noted by Dover,³¹ is the frequency of non-forensic³² vocabulary that amounts to 77 words in just 55 paragraphs. Some of them might add a somewhat poetic or archaic flavour to the speech,³³ but others are ritual terms and thus might have a dignifying effect as indicating a high register.³⁴ These also show the text’s exceptional character as regards its reliance on religious ideas and the unusual vehemence of their employment.

Thus the content is met by the form of the speech. The speaker displays an affinity to religious matters in his argumentation and in the way he brings them forward. This is completely in line with what we know of the tactics in major cases, where several speakers could join the prosecutor and support him with their pleas. The arguments are not the same (though some overlap is unavoidable), but each prosecutor makes his ‘specific contributions’.³⁵ The perspectives

³⁰ In contrast to the common translations (e.g. Todd 2000) I interpret φεύγειν here as not ‘to flee’ but ‘to be banished’ (cf. LSJ s.v. III 3). The accusative then means ‘from’, cf. Thuc. 5. 26. 5, Xen. Cyr. 3. 1. 24.

³¹ Dover (1968a), 80 2.

³² The term is defined as words that ‘are not attested in the forensic speeches of the corpus [Lysiacum], Andokides i ii, Isokrates xvi xxi, or Isaios’ by Dover (1968a), 64.

³³ Rare, but not necessarily poetic: ἔνθεν not in combination with μέν δέ or ἔνθεν καὶ ἔνθεν, αἰκισμα, ἀλγιστος (poet.), ἀλάομαι (poet.), διοχλέω, τροφεΐα.

³⁴ e.g. ἀποδιοπομπεύσθαι, ἀγνεύειν, δαιμόνιος.

³⁵ Rubinstein (2000), 175. An interesting side note in this context is Andocides’ possible affiliation to the clan of the Ceryces and his having initiated other people (Roussell 1930, 54 5;

they take are rather different. In the case of the Harpalus trial, Dinarchus' speech contains quite a bit of the ἀλιτήριος rhetoric, Hyperides' nothing at all. By analogy, the religious points addressed by Andocides made up most of one prosecutor's speech. The other prosecutors would concentrate on points he seems to leave out. The speaker of *Against Andocides* takes the role of the admonisher. He does not bother about the political impact, but is responsible for the jurors' awareness of the religious dimensions and consequences of the trial. Perhaps his function is, as I have indicated above, to undermine Andocides' argument that the decree of Isotimides no longer counts after the amnesty and the revision of the laws. His authority enables him to raise issues which seem rather archaic for the post-war Athenian democracy without being ridiculed as a mad bigot. This ethos of religious authority is claimed both by his reference to his family ties to the hierophant Zacorus and by the style and the very content of his speech. He can even assume a pedagogical tone, warning the jurors that an acquittal will teach Athenians that impiety is not punished – and thus make them 'more godless' (§32).

It is not possible to say whether the speaker really had this authority from the start or whether he just assumes it by the way he argues and delivers his speech. This would be an extreme instance of ῥηθοποιία in a single speech, as suggested by Aristotle (*Rh.* 1. 2, 1356^a8–10). If he is not lying about his ancestry, it is probable that he did not choose this role randomly. It would certainly have helped if he had been known beforehand as someone with a religious background by at least some of the jurors. In a city like Athens, a deceit of the sort suggested might not have been possible. However, one should not rule out the possibility that his authority and his connections to the Eumolpidae were played up by his style as well as by the way he was introduced to the jury in the main prosecution speech.³⁶

Appendix: The Speaker of *Against Andocides* and Socrates' Prosecutor

The identity of the speaker of *Against Andocides* is a vexed question and must ultimately remain open. However, the likelihood of his being Meletus, the son of Meletus, is relatively high. We know that the speaker must be one out of Epicharis, Agyrrhius, and Meletus. Moreover, in the same year another trial concerning ἀσέβεια was initiated by a Meletus against Socrates. These facts taken together have led to the suggestion that the two are the same.³⁷ The

MacDowell 1962, 156 on Andoc. 1. 132; a reflection of this fact might be seen in Lys. 6. 5, 11) the prosecution might have felt the need to produce someone who could balance Andocides' own authority in this respect.

³⁶ Cf. the announcement of Eubulus and Phocion in Aeschin. 2. 184.

³⁷ Blumenthal (1973), Slings (1994), 94–5.

evidence against this position is not better than that in favour of it.³⁸ The main argument for those who think that Lysias' speech was delivered by this same Meletus has been the religious character of both *Against Andocides* and of Meletus' indictment against Socrates.³⁹ So it would be a *petitio principii* to claim that, since the speaker is the same, the similarity of the ethos in both speeches is an indication that a speaker needed to be consistent throughout his career. However, if we assume they are identical, at least we get a coherent picture of the speaker's way of arguing.

Three people shared in the prosecution of Socrates: apart from Meletus there were Anytus, one of Andocides' supporting speakers, and one Lycon, about whom nothing is known. Plato suggests that they, too, divided the matter among them, by saying that Meletus had a grudge against Socrates on account of the poets, Anytus on account of the craftsmen and politicians and Lycon on account of the orators (Pl. *Ap.* 23 E). Given that Anytus was a leading politician in Athens, it is unlikely that he took a completely apolitical stance in this trial: he is known as an advocate of the amnesty, and in Plato's *Meno* he is depicted as strongly opposed to the sophists.⁴⁰ So it would be natural to assume that he focused on these topics, even though he may have touched upon other aspects as well. Socrates' teaching was, as far as we can tell from the various sources, not democracy-friendly, but attracted a number of people with distinctly aristocratic views.⁴¹ Aeschines' remark that he was put to death because he had taught Critias cannot be the official reason (because of the amnesty), but it may reflect common perceptions and prejudices of the Athenian public which may also have influenced the trial itself. This danger for democracy would have been the appropriate topic for Anytus.

³⁸ Andocides accuses Meletus of having arrested Leon at the command of the Thirty (§94). This must be the same incident that is mentioned in Pl. *Ap.* 32 C D. However, in the *Euthyphro* (2 B), Plato has Socrates say that he does not know Meletus who has accused him. So some people (MacDowell 1962, 209, most recently Nails 2002, 199–200) think this cannot be the same Meletus. However, (1) Socrates does not necessarily mean that he has never met the person before, (2) he might not have had close contact with Meletus on the first occasion, (3) he admits that he knows the principal features of Meletus' looks. Moreover, Plato and Xenophon seem to avoid mentioning the political background of the hostility against Socrates and concentrate on the charges laid down in the indictment. Neither writes a forensic speech in which he vilifies the opponents on grounds of his character or past life to make himself the more likeable litigant. If, in the *Euthyphro* or elsewhere, Plato had identified Meletus as the person involved in the Leon affair, the philosophical significance of the trial would have been diminished by the awareness of the circumstances. For it would have made the conflict between prosecutor and defendant appear in a new light. Nails's point (2002, 199) that Anytus would not have changed sides and cooperated with a man who stood on the other side in the first trial, rests on false assumptions: his political stance with regard to the amnesty of 403 would be consistent, cf. Hansen (1995), 7–8; instances of changes of alliances are Demosthenes and Philocrates or Demosthenes and Hyperides. Finally, Nails (2002), 200 does not produce evidence for her claim that the Thirty would only send distinguished elderly citizens to perform those arrests.

³⁹ Marr (1971), 334 n. 1 also points out that the characterization of Epicharis by Andocides (1. 95–100) and Agyrrhius' political activity render the role of the 'religious' prosecutor unlikely.

⁴⁰ Amnesty: Isoc. 18. 23, opponent of sophists: Pl. *Men.* 91 c.

⁴¹ Hansen (1995), 17.

By contrast, Meletus, being the first speaker, probably had to stick more closely to the wording of the indictment that consisted of the allegations of not believing in the gods of the city, introducing new gods, and corrupting youth.⁴² The first two of these allegations⁴³ are obviously of religious nature. The third one is linked to them by Plato's 'Meletus': rejection of the traditional religion as it is taught by Socrates corrupts youth (*Ap.* 26 B). This corresponds to the warning in *Against Andocides* (§32) not to make people 'more godless'.

Going back to Meletus' supposed connection with the poets, we find the same allegations in Aristophanes' *Clouds*: Socrates initiates his pupils into the cult of new deities, the clouds, and teaches various 'facts' that are apt to diminish the respect for, and veneration of, the traditional gods. This, among other things, corrupted the young.⁴⁴ In the *Birds*, too, the chorus mention Socrates, who raises ghosts of the dead. The language is mostly religious, mixed with notions of corrupting others.⁴⁵

These considerations are not meant as an argument for the identity of the speaker of *Against Andocides* with Socrates' prosecutor. However, if we assume that the two litigants are indeed identical, there are no obvious inconsistencies for the theory presented: in both trials, the 'team' of prosecutors arranged a division of the issues. The religious aspects might have been more or less reserved for Meletus, whereas Anytus concentrated on political questions. It is unclear exactly how Meletus tried to prove Socrates' disbelief in the πόλις gods. Perhaps, his function as the main prosecutor prevented him from argumentation as idiosyncratic as in *Against Andocides*, but he was the one who had to make the case for the ἀσέβεια of which Socrates was accused. In the other speech, the prosecutor as we have seen could leave out this point and immediately turn to the more radical description of the dangers this ἀσέβεια brought with it.

⁴² Diog. Laert. 2. 40; the special attention of Meletus to these charges is confirmed by Xen. *Ap.* 11, 19. There is not sufficient evidence to accept Furley's reconstruction of the prosecution (1996, 108) as arguing that the gods (wrathful because of Socrates' unbelief) had 'made Sokrates a figure of ridicule; he is impoverished and sits at street corners conversing with a few strangers like a beggar'.

⁴³ For θεοὺς οὐ νομίζει cf. Lys. 6. 19.

⁴⁴ The whole Socratic teaching seems to be based on the 'new' gods: they promise to teach Strepsiades rhetoric (*Nub.* 431 2, 435) and the revelation of their true identity implies the rejection of all the Socratic doctrines (*Nub.* 1476 7); on the combination of natural philosophy and unorthodoxy cf. e.g. 830 1. Cf., however, the stress put on social components ('the secret, elitist, antisocial character of his teaching') by Parker (1996), 205.

⁴⁵ Ar. *Av.* 1554 5, cf. Dunbar (1995), 710 12, esp. on ψυχαγωγεί; her explanation of ἄλουτος, however, hardly mentions the sense of 'defilement' (cf. Hdt. 2. 64). The other comic fragments in which Socrates appears to a large part deal with his poverty, cf. Eupolis *PCG* 386, 395, Amipsias *PCG* 9; two fragments of Teleclides (*PCG* 41 2) seem to describe figuratively an intellectual relationship between Socrates and Euripides. This could target the immorality as well as the unorthodox theology in the latter's tragedies (but probably both). Only one fragment seems to point at Socrates' alleged sophistic teaching: Callias *PCG* 15.

LYCURGUS

In the years after Chaeroneia Lycurgus led a campaign against those who had let the city down in the greatest peril. He impeached Lysicles, the general responsible for the defeat, and prosecuted Autolycus and Leocrates for cowardice. The speech against the latter alone is extant. Shortly after the battle Leocrates had evacuated his family and fled to Rhodes. In his speech Lycurgus does not quote a single law but instead plenty of poets, anecdotes, and oath formulae as examples of the will to act patriotically and make personal sacrifices.

The motivation for Lycurgus' relying on (*prima facie*) irrelevant arguments seems obvious: since Leocrates fled before the decree was passed that forbade leaving the city,⁴⁶ Lycurgus avoids 'proper' legal argumentation. The 'evidence' he presents instead is supposed to distract the jurors from the fact that his prosecution was unjustified, since the decree did not yet exist.⁴⁷ According to this interpretation, solemn examples and sacred norms serve to evoke the jurors' religious feelings and to achieve a conviction on the basis of moral-religious disapproval of Leocrates' actions. The process of persuasion that is described in this way is based on the speaker's performance and does not look beyond a single trial.⁴⁸ The lack of a legal basis for his prosecution determines Lycurgus' choice of arguments.

Against this view two major objections can be made. First, Athenian dikasts did not focus on laws in the same way as their modern counterparts. Other arguments such as expediency or the exploitation of prejudices could considerably influence a decision.⁴⁹ Second, it is clearly discernible that Lycurgus did not use this sort of argument exceptionally, as an expedient means to conceal the lack of a firm legal basis in this specific case. Rather, he was consistent in the way he argued. Myths and norms as presented in *Against Leocrates* were a regular feature in his speeches and apparently had a function going beyond immediate success in a single trial.

Of the fifteen speeches that were published, only *Against Leocrates* has survived; of the rest we have only fragments and/or testimonia. There is no strong evidence of Lycurgus writing any of these speeches as logographer for other people;⁵⁰ instead, he probably delivered them all himself. For the present purpose, it is necessary to divide

⁴⁶ Petrie (1922), pp. xxvii–xxviii.

⁴⁷ Vielberg (1991), 62.

⁴⁸ Cf. Vielberg's quotation (1991, 63 n. 80) of Arist. *Rh.* 1. 2, 1356^a4–6, where Aristotle says that the ethos works as a proof 'if the speech is delivered in such a way that it makes the speaker credible'.

⁴⁹ Todd (1993), 60 'Laws, like other forms of evidence, served to persuade rather than to bind an Athenian court.' Cf. Johnstone (1999), 22–3, D. Cohen (1995), 180, Lanni (2006), 117–30; *pace* Harris (1994) and (2000a). Above all, it was possible to prosecute someone for treason without any specific decree, as long as one could make it plausible that his actions constituted treason, cf. below, p. 160. This does not mean that one could disparage the law, cf. Carey (1996), 45–6.

⁵⁰ Cf. below, n. 96.

them into three groups in accordance with the three ways in which he was active in Athens. Probably from 336/5 to his death in 324 the Athenians elected him 'head of the administration', which means he was chief treasurer of the public funds.⁵¹ As a prominent member of the clan of the Eteoboutadae and priest of Poseidon Erechtheus he pleaded for others in several disputes about priesthoods or other religious matters. Finally, he acted as prosecutor in public trials.

Speeches to the People

In his first function, two speeches are attested.⁵² In both of them Lysurgus renders an account of his administration. The fragments of these as well as the inscriptions that record his enactments show his concern for the reform of the city cults. In this endeavour he did not stand alone, but was certainly the most powerful among those who pursued this programme in Athens at the time.⁵³ His religious agenda comprised reviving, regulating, and admitting cults as well as finishing and erecting buildings in the Athenian sanctuaries.⁵⁴ Even the fixing of the texts of the three great tragedians and the reform of the ephebeia in a way contributed to the increasing regulation of religious life.⁵⁵ If it is at all possible to find a common denominator to all these measures, one might say that they add up to a policy that is 'encouraging the worship of the gods to flourish as the centre of a flourishing state.'⁵⁶

Lysurgus aimed at stabilizing the πόλις after the national catastrophe of Chaeroneia. On the one hand, he improved public finances and increased Athens' military power. On the other hand, he strengthened the bonds between the citizens by emphasizing cultural values, such as worship of the gods and moral concepts. Thus an improvement of the citizens' moral qualities was not an aim in itself but might have been an attempt to create or enhance something like a civic spirit.⁵⁷

⁵¹ On the dates of Lysurgus' terms of office as *ὁ ἐπὶ τῇ διοικήσει* cf. Bosworth (1988), 205 with n. 21, Lewis (1997), 221 7; on the title cf. Rhodes (1981), 515 16.

⁵² One of them might have been a pamphlet rather than an actual speech, cf. Conomis (1961), 80. Of course, as an active politician he must have addressed the assembly on a regular basis, even if Ps.-Plutarch's *εἶπε δὲ καὶ περὶ ἱερῶν πολλάκις* (*Mor.* 843 D) refers only to those speeches that were published. The defence against Demades (IV) might have been a forensic speech but similar in content.

⁵³ Cf. Humphreys (1985*a*), 204 (2004), 83 4.

⁵⁴ Hintzen-Bohlen (1997) in particular 18 54; in addition, Plut. *Mor.* 841 D mentions gold and silver equipment for processions.

⁵⁵ On the tragedies cf. Plut. *Mor.* 841 F; Mossé (1989), 32, Prauscello (2006), 68 78. The participation of the ephebes at city-festivals is attested in various inscriptions (e.g. *IG* ii². 3105), cf. Humphreys (1985*a*), 207 8 (2004), 89 92, (2004), 116 17.

⁵⁶ Parker (1996), 243.

⁵⁷ Cf. Engels (1992), 17 who states that Lysurgus' non-military undertakings were mainly concerned with the core of Athenian democratic institutions or with his 'religiösen und staatspädagogischen Renovatio', which includes the resolve to defend the city's political status (i.e. its autonomy) in the time after 338.

The accounts to the assembly confirm the importance of religion within Lycurgus' overall policy.⁵⁸ He seems to be concerned with the administration of cults, their finances, and the erection of temples.⁵⁹ The large ratio of clear references to cults and rites among the fragments reflects Lycurgus' concern with such matters. It does not give a clue how the argumentation in each case worked: anything from a mere monetary point of view to suggestions how the gods might be pleased would be possible. In the chapter on assembly speeches it will appear that a discussion in terms of financial matters probably predominated. This is also the aspect that is most prominent in the inscriptions. However, both the concern and the competence of Lycurgus in matters of cults manifest themselves even so.

Speeches on Religious Matters

In the speeches *On the Priestess* (VI), *On the Priesthood* (VII),⁶⁰ and perhaps in *On the Oracles* (XIII),⁶¹ Lycurgus seems to have acted as an advocate: he was certainly not an arbitrator or exegete, but had committed himself to one party. Still, the fragments show that he was playing his role on account of his expertise in

⁵⁸ The fragments of all the speeches are problematic in two ways. First of all, they are not representative but reflect the interest of the excerptor or lexicographer who quotes from Lycurgus. Harpocration, for example, is interested in unusual words or expressions that required an explanation in his time (e.g. *ἐκατόμπεδον*, I F 3). Second, the relatively high number of references to religious institutions etc. might lead us to the assumption that words which have (among others) a religious meaning must have been used in exactly this meaning by Lycurgus, although there is no clear indication in the sources. As for the first point, it is still clear that Lycurgus mentions cults, myths, etc. that are not part of the standard repertoire of the other orators (otherwise they, too, would be quoted sometimes) and that the number of such references or uses of rare vocabulary related to religion is considerable. As for the second point, all we can do is be aware of the problem.

⁵⁹ The reference to the money generated by the sale of hides (*δερματικόν*, I F 1, cf. *IG* ii². 333 e 23) suggests that in the context of his financial administration Lycurgus talked about cult regulations; that the proceeds were considerable can be seen from *IG* ii² 1496. For other references cf. I F 3, V F 4, 7. V F 6 probably deals with the erection of a temple of Agathe Tyche, a deity who was probably admitted into the state cult under Lycurgus himself or a short time before (cf. Ch. 3 n. 14). As for the reference to *αἰγίδες* (V F 7), a parallel exists in a law proposed by Lycurgus (*IG* ii². 333 c 11). The interpretation as goat-skin (cf. Conomis 1961, 104 6) would mean that probably upon his initiative half a hecatomb of goats was sacrificed at the Greater Panathenaea, again a considerable expenditure (or gain, if the hides were sold). In other cases, a connection with cults is possible, but uncertain: V F 9, 10 (cf. Conomis 1961, 106 7), see also IV F 1, referring to a contest during the Panathenaea; if *ἐδωλίσσαι* (I F 2) was used in relation to the theatre, it is another reference to Lycurgus' concern with sacred buildings.

⁶⁰ Harpocration (VII F 2) reports that some think this speech is by Philinus. However, the majority of ancient authorities seem to have dismissed this assumption. There is perhaps a chance that Philinus delivered a speech for the opponents (on Philinus' political affiliation cf. Conomis 1961, 120) highlights of which might have been preserved for Athenaeus to quote from them (VII F 5). So this fragment will be disregarded in this context.

⁶¹ Nothing significant is left of this speech, anyway, so it is irrelevant where it was set, whether in the assembly or in the courts; on several reconstructions cf. Conomis (1961), 139 40. On the Athenian habit of not publishing one's own assembly speeches, cf. Intro. n. 32; Lycurgus' accounts may be seen as different from an orator's contribution to political debates.

religious matters.⁶² The dispute on the priesthood was apparently about the influence of two clans at a certain festival (or certain festivals).⁶³ The means by which they contended included discussion of the founders of the clans and even questions of illegitimacy of one of the heroes, to undermine each other's case.⁶⁴ It is fairly likely that Lycurgus dwelt on the explanation of the festivals to the Athenian jury, who were not necessarily familiar with them: in the case of the Procharisteria he stresses both its age and the cultic background (VII F 1a). We might also expect him to set forth the role the individual clans played in the ritual (including other clans such as the Cynnidae and the possible phratry of Philieis).⁶⁵ If it was he who spoke about the original family relations, this included mythical narrative. The various place-names mentioned in the fragments (Perithoedae, Scambonidae) might derive from this narrative⁶⁶ or from the presentation of other festivals. In any case, this case required detailed knowledge of Athenian religious tradition and contemporary practice, at least more than the average Athenian dikast seems to have had.

The case of the priestess shows Lycurgus even more clearly in the role of an expert. The background of the trial can only be guessed at. However, frequent mentions of Athena Polias suggest that the eponymous priestess of the speech is hers.⁶⁷ Since that priestess was like Lycurgus himself a member of the Eteoboutadae, personal interest as well as superior knowledge on his side is likely: he refers once more to a myth, that of Alope (VI F 6), which is connected with Poseidon, possibly giving an aetiology of a cult.⁶⁸ Apparently, he also gave a somewhat detailed list of sacrifices and festivals, presumably to show the duties the priestess had.⁶⁹ However, he seems not to have focused exclusively on cult regulations, but argued his case in its legal aspects as well, referring to the Solonian laws and perhaps also to the precedent of the verdict on Micon.⁷⁰ As it

⁶² Among the speeches ascribed to Dinarchus there are some similar cases. However, they are all proved spurious by Dion. Hal. *Din.* 11 (e.g. §§2, 5, 6). So a similar authority (at least as a speechwriter, since he did not deliver his speeches himself) need not be ascribed to him.

⁶³ Cf. *FGrH* IIIb (Suppl.), i. 628 9. The Coeronidae were probably associated with the rural festival of the Theoenia (Dionysius Scymnaeus *TrGF* 208 F 1); the clans might also have figured at the Procharisteria (being another important point in the agricultural year).

⁶⁴ Kearns (1989), 67.

⁶⁵ Cf. VII F 2, 4; on the otherwise unknown Philieis cf. Lambert (1993), 367 8.

⁶⁶ Cf. Paus. 1. 38. 2 on the Scambonidae's legend about where Crocon lived.

⁶⁷ Conomis (1961), 108.

⁶⁸ Toepffer (1894) points out that in Dinarchus' speech in the *διαδικασία* on the priesthood of Poseidon, in which Alope is also mentioned (Din. XX F 2), the issue is the priesthood of Alope's divine lover. Considering that Harpocration attests the mention of the Eteoboutadae, on whose behalf Lycurgus was priest of Poseidon Erechtheus, in that speech (VI F 11), one might assume a similar context. A connection between Dinarchus' and Lycurgus' speeches must remain speculation.

⁶⁹ This is obvious in VI F 4; other instances are VI F 2, 8, 9, 15, 16, 18, 21; VI F 10 and 20, too, seem to derive from a description of ceremonies.

⁷⁰ The text of VI F 3 is corrupt, but the verb *ἐζημίωσαν* is unobjectionable; Solonian laws: VI F 12. On possible patriotic overtones as regards Micon cf. n. 71.

seems, Lycurgus in addition stressed the dependence of the welfare of the state on the proper working and clear division of competences in the religious sector: in the proem he states that the trial is not on a private matter.⁷¹

Again we cannot reconstruct Lycurgus' arguments in detail, because we have rarely more than single words or phrases on which to base our speculations. It is, however, beyond doubt that in these speeches mythology is used to give legitimacy to claims; Lycurgus claims to be right on the basis of religious knowledge. This does not seem exceptional in speeches on religious issues, but it demonstrates Lycurgus' expertise and his authority among those who chose him as supporting speaker and those before whom he speaks.

Speeches in Public Trials

The third group of speeches is the one the only surviving biography characterizes by saying that Lycurgus 'dipped his pen in death, not in ink, against the evildoers'.⁷² Since the extant speech belongs to this group, it will be best to start the consideration of Lycurgus' prosecutions in public cases with *Against Leocrates*. After that, I shall try to show parallels in other cases that suggest the coherence of Lycurgus' manner.

In *Against Leocrates*, Lycurgus does not bring himself as an individual into prominence. Instead, starting from the proem he describes his role as that of 'the prosecutor' in general, who takes on the invidious task of accusing citizens and exposing himself to allegations of sycophancy. All this he does for the good of the city (§3). Although he does not even allude to his function in the administration of the city, he depicts himself as taking care of Athens' moral standards and reputation (§5).

Right from the start, Lycurgus marks the importance of the religious aspects of the case (§§1–2):

Δικαίαν, ὦ Ἀθηναῖοι, καὶ εὐσεβῆ καὶ ὑπὲρ ὑμῶν καὶ ὑπὲρ τῶν θεῶν τὴν ἀρχὴν τῆς κατηγορίας Λεωκράτους τοῦ κρινομένου ποιήσομαι. εὖχομαι γὰρ τῇ Ἀθηνᾷ καὶ τοῖς ἄλλοις θεοῖς καὶ τοῖς ἥρωσι τοῖς κατὰ τὴν πόλιν καὶ τὴν χώραν ἰδρυμένοις, εἰ μὲν εἰσήγγελκα Λεωκράτη δικάϊως καὶ κρίνω προδόντ' αὐτῶν καὶ τοὺς νεῶς καὶ τὰ ἔδη καὶ τὰ τεμένη καὶ τὰς ἐν τοῖς νόμοις τιμὰς καὶ θυσίας τὰς ὑπὸ τῶν ὑμετέρων προγόνων

⁷¹ Of course, the motif is conventional. However, the fragments indicate that the public significance was stated in the course of the speech as well: if we take VI F 3 on the fine imposed on Micon together with the mention of Polygnatus (VI F 17), we have probably a reference to the contrasting stories that Micon was fined for painting the barbarians bigger than the Greeks (cf. Sopater, *Rhet. Gr.* viii. 126 Walz and Sauppe's and Müller's emendations of VI F 3), while Polygnatus was awarded citizenship for decorating the Stoa Poikile for free (mentioned in VI F 17, cf. Plin. *HN* 35. 59). If this contrast was highlighted in the speech, the fact would confirm that the patriotic tendency of *Against Leocrates* and other speeches featured even in this one, although it did not clearly deal with political issues.

⁷² Plut. *Mor.* 841 e.

παρεδομένας, ἐμὲ μὲν ἄξιον ἐν τῇ τήμερον ἡμέρᾳ τῶν Λεωκράτους ἀδικημάτων κατήγορον ποιῆσαι, ὃ καὶ τῷ δήμῳ καὶ τῇ πόλει συμφέρει, ὑμᾶς δ' ὡς ὑπὲρ πατέρων καὶ παίδων καὶ γυναικῶν καὶ πατρίδος καὶ ἱερῶν βουλευομένους, καὶ ἔχοντας ὑπὸ τῇ ψήφῳ τὸν προδότην ἀπάντων τούτων, ἀπαραιτήτους δικαστὰς καὶ νῦν καὶ εἰς τὸν λοιπὸν χρόνον γενέσθαι τοῖς τὰ τοιαῦτα καὶ τηλικαῦτα παρανομοῦσι.

Athenians, I shall make the beginning of this prosecution of Leocrates, which I have brought on your behalf and for the sake of the gods, both righteous and pious. This is my prayer to Athena and the other gods and heroes whose statues stand throughout the city and the countryside: if the indictment I have brought against Leocrates is just and I have brought this man to court because he has betrayed their temples, statues, and precincts as well as the honours granted by the laws and the sacrificial rites handed down by your ancestors, then on this day may you gods make me equal to the task of prosecuting Leocrates' crimes for the good of the people and the city. You are about to make a decision affecting your fathers, children, and wives, your fatherland and sacred rites, and you have the man who betrayed them all subject to your vote: may the gods make you, both now and in the future, implacable dikasts to all those who commit such great offences against the laws.

The gods and heroes are not invoked to support Lycurgus in prosecuting Leocrates' betrayal in general, but only for the aspects with which they are concerned: temples, sanctuaries, and their honours from the city. In this way, Lycurgus points out that Leocrates committed an offence against the divine sphere. At the same time, the prayer indicates Lycurgus' claim of religious authority: he stands on the gods' side (provided that his accusations are justified) and the gods will render him able to cope with the difficulty of the accusation. The difference from Demosthenes' introductory prayer in *On the Crown* should be obvious: Demosthenes' invocation and request for the jury's benevolence proved to be defensive, intended to ward off Aeschines' allegations of pollution until he had prepared his own interpretation of *τύχη*. By contrast, Lycurgus sets the tone and marks the trial as one religious in content which it was not in the first place.⁷³ The betrayal of the temples of the city is a leitmotif of the speech, but it is not always isolated from the betrayal of the city as a whole. More often, these two aspects are juxtaposed. In §8 among other passages we hear that Leocrates has left behind his fatherland and the whole city and that he has not come to defend the sacred places:

τί γὰρ χρὴ παθεῖν τὸν ἐκλιπόντα μὲν τὴν πατρίδα, μὴ βοηθήσαντα δὲ τοῖς πατράοις ἱεροῖς, ἐγκαταλιπόντα δὲ τὰς τῶν προγόνων θήκας, ἄπασαν δὲ τὴν χώραν ὑποχείριον τοῖς πολεμίοις παραδόντα; τὸ μὲν γὰρ μέγιστον καὶ ἔσχατον τῶν τιμημάτων, θάνατος, ἀναγκαῖον μὲν ἐκ τῶν νόμων ἐπιτίμιον, ἔλαττον δὲ τῶν Λεωκράτους ἀδικημάτων καθέστηκε.

What should the man suffer who deserted his country, failed to protect the ancestral temples, abandoned the tombs of his ancestor, and left the entire land in the hand of the enemy? The greatest and most severe of all punishments, death, which is the mandatory punishment in the laws, but it does not measure up to Leocrates' crimes.

⁷³ Cf. below, n. 83.

The fourth element of this list, the tombs of the ancestors, can be regarded as intermediate, a link between the sacred realm and the world of the living.⁷⁴ The gods and the fatherland are described as linked by a relation of give and take. To a certain extent, gods and city form a unity so that treason is at the same time *ἀσέβεια* because the traitor robs the gods of the traditional sacrifices (§129) and exposes their sanctuaries to the enemy (§147). He thus fails to give the gods their proper due, that due in return for which the gods protect the city (§26).

Lycurgus establishes the connection of treason and *ἀσέβεια* in yet another way:⁷⁵ he quotes at length the ephebic oath which every young man had to take. Since in the oath the ephebes swore not to leave the ranks but to defend the city Leocrates has perjured himself (§76).⁷⁶ His *ἀσέβεια* is also substantiated by other aspects of his behaviour, such as neglect of duties towards his parents (§§94, 147).⁷⁷ Lycurgus takes treason in its different aspects and transforms it into a new charge. Leocrates is described as an offender against the gods and the foundations of *εὐσέβεια*. We can thus see that Lycurgus introduces a charge not included in the actual core of the prosecution – just as Demosthenes seemed to do in *Against Midias*. The difference from Demosthenes' speech lies in the importance of that additional charge: whilst Demosthenes points only at the possible interpretation of Midias' offence as impiety and leaves it otherwise as a manifestation of *ὑβρις*, Lycurgus makes this aspect central to his argumentation. The allegation of misconduct against the gods constantly recurs, from the prayer at the start to the summary at the end (§150). The gods are offended not just to the same extent as the Athenians: as far as Leocrates is concerned, their worship has been abandoned.

The sanctuaries that were let down by Leocrates are made the epitome of the city. In this way, Lycurgus also exploits the social connotations of the state cult: the gods preserve the city, and the city, in turn, sacrifices to them and worships them; it sets up laws that regulate the cult (§1). Moreover, the transfer of his private gods to his exile in Megara is a demonstration of Leocrates' contempt for Athenian statutes (*νόμιμα*) and ancestral traditions (*πάτρια ἔθη*); he even seems to cut off his ancestral connections to the city by disregarding the 'paternal' character of the *ἱερά* he takes away (§25, cf. also the reference to his father's statue

⁷⁴ Cf. Aesch. *Pers.* 403–5. Other instances of the betrayal of the temples: without mentioning the city §25; with the city or the fatherland mentioned §§2, 8, 17, 26, 27, 35, 38, 78, 85, 143, 147, 150. A special case, which might give a clue about the terms of the accusation, is §137: the betrayal of his father's statue in the sanctuary of Zeus Soter. According to this passage, the names of other deities or at least a general reference to the gods betrayed may well have appeared in the *εἰσαγγελία*.

⁷⁵ On the connection of patriotism and piety cf. Dover (1974), 250–3.

⁷⁶ The alternative (that Leocrates has not taken the oath) is only hypothetical, and would show according to Lycurgus – that Leocrates premeditated his neglect towards his fellow citizens and the gods.

⁷⁷ Compliance with burial rites as religious duty: Aeschin. 1. 14 and below, Ch. 8; cf. also above, n. 9.

in §137).⁷⁸ In consequence of these crimes, Leocrates must be excluded from the community of cult (§142, cf. also §5):

καὶ γὰρ δεινὸν καὶ σφέτλιον, ὅταν νομίξῃ δεῖν Λεωκράτης ἴσον ἔχειν ὁ φυγὼν ἐν τῇ τῶν μεινάντων πόλει, καὶ ὁ μὴ κινδυνεύσας ἐν τῇ τῶν παραταξαμένων, καὶ ὁ μὴ διαφυλάξας ἐν τῇ τῶν σωσάντων, ἀλλ' ἦκη ἱερῶν θυσιῶν ἀγορᾶς νόμων πολιτείας μεθέξων, ὑπὲρ ὧν τοῦ μὴ καταλυθῆναι χίλιοι τῶν ὑμετέρων πολιτῶν ἐν Χαιρωνείᾳ ἐτελεύτησαν καὶ δημοσίᾳ αὐτοὺς ἡ πόλις ἔθαιβαν.

It would be terrible and abominable if Leocrates, who fled, did not face danger and failed to protect the city, thinks he should have equal rights as the men who remained here, stayed at their posts, faced danger, and saved the city. But he comes to share the temples, sacrifices, markets, laws, and privileges of citizenship, which a thousand of you died at Chaeroneia to preserve, men whom the city buried at public expense.

The usual function of sanctuaries and state cult as a focus of social coherence of the πόλις is thus present in this speech, too. It is, however, outweighed by the idea that Leocrates directly offended the gods. Accordingly, the gods are represented as active in various ways. Their interest in and commitment to Athens just mentioned is only one form of such activity. Their intervention in favour of Athens is spoken of several times, but there is also the danger of their ceasing to help if the Athenians followed Leocrates in not worshipping them.⁷⁹

In addition to these motifs, Leocrates himself, like Andocides, is said to have been driven by the gods to return to Athens in order to stand his trial. He, too, has been led astray and is now facing shameful punishment instead of a heroic death on the battlefield (§§91–2):

οἶμαι θεῶν τινα αὐτὸν ἐπ' αὐτὴν ἀγαγεῖν τὴν τιμωρίαν, ἢν' ἐπειδὴ τὸν εὐκλεᾶ κίνδυνον ἔφυγε, τοῦ ἀκλεοῦς καὶ ἀδόξου θανάτου τύχοι, καὶ οὕς προῦδωκε, τοῦτοισι ὑποχείριον αὐτὸν καταστήσειεν. ἐτέρωθι μὲν γὰρ ἀτυχῶν οὐπω δῆλος, εἰ διὰ ταῦτα δίκην δίδωσιν ἐνταῦθα δὲ παρ' οἷς προῦδωκεν φανερός ἐστιν, ὅτι τῶν αὐτοῦ παρανομημάτων ὑπέχει ταύτην τὴν τιμωρίαν. οἱ γὰρ θεοὶ οὐδὲν πρότερον ποιούσιν, ἢ τῶν πονηρῶν ἀνθρώπων τὴν διάνοιαν παράγουσι.

I think that some god brought [Leocrates] back straight for punishment so that he should meet with a death without glory and honour for fleeing the danger that would have brought him glory, and give himself into the hands of those he has betrayed. If he had met with disaster in any other place, it would still not be clear that this was the reason for his punishment. But here among those he betrayed, it is obvious he is being punished for breaking our laws. The first the gods do to evil men is to lead their minds astray.

⁷⁸ Sourvinou-Inwood (2000), 50–4 convincingly argues (not only from this passage) that 'private' cults like these had in fact a close connection with the πόλις cult and could not be seen as private or independent.

⁷⁹ §26, 82.

That it is the common fate of evildoers to be mentally blinded by the gods is substantiated by a quotation from tragedy.⁸⁰ This is only the first of a number of instances of myths and tales in which the gods are described as intervening in human affairs. The subsequent complaint about Leocrates' shameful treatment of his parents is followed by the anecdote of a man who did not leave his father behind during an eruption of Mt Etna: the gods show their goodwill by saving both of them, while those who flee without consideration of their parents die (§§95–6).⁸¹ Twice in the context of stories from the mythical or archaic period (the death of Codrus, §84, and the First Messenian War, §105), Lycurgus reports oracles of the god. Both times, Apollo gives advice on how to win the war and in this way has a decisive influence on its course. In the second case, Lycurgus concludes that the god obviously judges the Athenians better than the Spartan kings. Divine concern and influence are thus presented as a regular phenomenon.

Lycurgus' whole argument rests on questions of ethics: it would have been Leocrates' moral duty to stay in Athens after Chaeroneia – whether there was a decree that outlawed flight or not. On the one hand, flight is in many ways an offence against the gods and will be punished by them; on the other hand, it is a crime against the city to leave in a situation of danger. Lycurgus' language links these two spheres by frequently juxtaposing them.⁸² Both accusations are underpinned with 'documents' that express ethical norms: poetry, myths, and oaths.

This does not mean that Lycurgus tried to make up for the non-existence of a relevant decree. To begin with, treason was, of course, always punishable.⁸³ Of higher importance, and of greater impact for this study, is the fact that Lycurgus uses this form of argumentation not just once, but in several, if not all, of his (forensic) speeches. He uses public prosecution as a weapon in the fight for his policy, and religious argumentation seems to have been an integral part of it just as it was in that policy.

The biography makes it clear that there was some consistency in the way Lycurgus acted before the courts of law, and a certain unity of style is ascribed to him by later literary critics: he was prosecutor-like throughout, and he frequently included digressions using myths, history, and poetry.⁸⁴ Since in the trials about the priestess and about the priesthood myths were probably already part of the proof of certain claims and not digressions in the strict sense, this information is most likely to refer to the public trials. At least the strategy against Autolycus

⁸⁰ *TrGF*Adesp. 296. The dikasts, too, are threatened with divine revenge if they vote in favour of Leocrates (§148).

⁸¹ This seems to have been a popular story, even though we have no earlier tellings; cf. Petrie (1922), 166, and Rehdantz (1876), 166 for other versions.

⁸² Salomone (1976), 44.

⁸³ Cf. the clause of the law on *εἰσαγγελία* in Hyp. 3. 8 *ἐάν τις πόλιν τινὰ προδῶ* (cf. also *Lex. Cant.* s.v. *εἰσαγγελία*, Pollux 8. 52). There is no notion of a religious offence in the fragments of Hyp. XI (*Against Autocles*).

⁸⁴ Plut. *Mor.* 841 E, 843 D, Dion. Hal. *De imit.* 2 epit. 5. 3, Hermog. *Id.* 2. 11 (*Rhet.* ii. 416 Spengel).

must have been very similar to that against Leocrates.⁸⁵ The fragments show imagery identical with that of the extant speech: as far as Autolycus was concerned, Athens would have been laid waste (III F 2). Lycurgus also spoke about tombs (III F 3), that is probably those of the ancestors – a clear parallel to the εὐσέβεια motif of *Against Leocrates*.⁸⁶ The speech *Against Lysicles*, the defeated general of Chaeroneia, seems to have worked with the same solemn and patriotic tone. Religious motifs or metaphors are, however, not attested.⁸⁷ These two speeches apparently work with the motif of the good citizen's obligations towards the city. A quotation from the proem of *Against Autolycus* may suggest that Lycurgus turned the trials into some sort of precedents and model cases (III F 1): 'Although many great trials have come before you, you have never come to judge a case of such importance.' The parallels with *Against Leocrates* are clear, and the testimonium about the digressions may suggest a similar argumentative technique in all these speeches.

Another trial in which Lycurgus was the main prosecutor is that against Aristogiton for which we also have two speeches in the *Corpus Demosthenicum*. The accusation rested on allegations concerning financial matters and thus had no obvious connection to either patriotism or religion. Libanius reports the main strategy of the prosecutors, which seems very much to the point and technical with the focus on legal issues.⁸⁸ In two places, however, the first Demosthenic speech mentions details of the principal speech. Once, Lycurgus 'called Athena and the Mother to witness' (Dem. 25. 97). In the context of the trial the two goddesses were involved as the ones in whose temples the treasury and the public records were kept. Their presence as deities would probably be felt. It is unclear in what form Lycurgus called upon the Mother, but for a 'colloquial' invocation she would be a more than unusual addressee.⁸⁹ A sort of personification of the archive would be more appropriate and express a form of religiosity in which Athena and the Mother serve as active patron goddesses of the goods stored in their respective sanctuaries. In the second instance, Demosthenes says that Lycurgus has just talked about how awful a person Aristogiton is (Dem. 25. 54):

⁸⁵ Cf. Lycurg. 53 and the hypothesis to the speech.

⁸⁶ Cf. e.g. Lycurg. 8, 144; for the meaning of ἡπεία cf. Arist. *Ath. Pol.* 55. 3, Dem. 57. 67. Tombs are a conventional topos, cf. Thuc. 3. 58. 4, Aeschin. 3. 236.

⁸⁷ In XII F 1, the shame of the fatherland is what should have impelled Lysicles to commit suicide. The metaphoric and pleonastic ζῆν καὶ τὸ τοῦ ἡλίου φῶς ὄραν verges on the poetic. Diodorus (16. 88. 2) gives this passage as an example of how full of acerbity (τὸ πικρόν) all Lycurgus' prosecution speeches were.

⁸⁸ Lib. *Arg.* 24. 5–6 with the additional indication that Lycurgus treated these points in full, cf. also II F 1, 2, 5, 6 and 7. On the problems concerning the first speech (*Or.* 25) cf. Excursus. The second speech is almost unanimously regarded as non-Demosthenic, though a real forensic plea.

⁸⁹ Conomis (1961), 87; the verb ἐπιμαρτύρομαι, however, could be used for a very emphatic invocation, cf. Pl. *Ep.* 7, 350 b. I could not find an invocation to the Mother anywhere in Attic oratory, and Ar. *Av.* 877 is an exception (apart from being ironic). 'The Mother' instead of 'the archive in the Metroön' is used e.g. in Din. 1. 86.

δεινῶν γὰρ ὄντων, οὐ μὲν οὖν ἐχόντων ὑπερβολήν, ὧν ἠκούσατ' ἄρτι λέγοντος Λυκούργου, τὰ λοιπὰ ἐνάμιλλα τούτοις καὶ τῆς αὐτῆς φύσεως εὐρεθήσεται. πρὸς μὲν γὰρ τῷ τὸν πατέρα ἐν τῷ δεσμωτηρίῳ προδοὺς ἀπελθεῖν ἐξ' Ἑρετρίας, ὥσπερ ἠκούσατε Φαίδρου ἀποθανόντα ὁ ἀσεβὴς οὗτος καὶ μιαρὸς οὐκ ἔθαψεν.

What you have just heard from Lycurgus is serious, or rather, impossible to exceed, but the rest will be found to rival it and to be of the same character. Not content with abandoning his father in prison when he quitted Eretria, as you have heard from Phaedrus, this impious and foul wretch refused to bury him when he died.

Despite all the uncertainties surrounding this speech, it seems likely that Phaedrus was a witness summoned by Lycurgus.⁹⁰ His testimony apparently depicted Aristogiton as ἀσεβής and μιαρὸς. The actual allegation might have been that Aristogiton had not fulfilled his duties as a son.⁹¹

The trial of Menesaechmus combines themes already familiar. Most fragments consist of citations from lexicographers, in which festivals, sacrifices, and other cultic details are mentioned – just as in the speeches previously discussed. Again, Lycurgus chooses to explain customs and etymologies.⁹² At least one mythical story was told.⁹³ The charge was probably an illegal sacrifice: in a papyrus containing an extract of the speech, Lycurgus announces testimony of an 'expert', a herald to the Delian priest, which is to demonstrate that Menesaechmus is proposing something that leads to an ἀσέβημα (XIV F 1). However, the procedure is that of εἰσαγγελία (XIV F 6) and thus at least partly of political nature.⁹⁴ Menesaechmus himself is known to have been a politician and rival of Lycurgus.⁹⁵ So, in all likelihood, Lycurgus' plea combined the two elements of politics and religion.

Finally, in the two trials against Lycophron for adultery, Lycurgus again displays moral rigour.⁹⁶ The issue was suitable for talking about ethical standards. In X/XI F 11 he deals with the morally reprehensible use of gifts of nature; in the first fragment he suggests capital punishment. Fragment 2, possibly deriving from the same argument, warns of leaving anyone unpunished who might become an instructor in immoral behaviour:

⁹⁰ Cf. Excursus n. 217.

⁹¹ This was obviously a common allegation against Aristogiton. Dinarchus can give it a prominent place in his speech against him: Din. 2. 8, 11, 14 (τὸν ἀνόσιον ... καὶ μάλιστα περὶ τοῦ ἑαυτοῦ πατέρα γεγεννημένον), 18, 20.

⁹² XIV F 2, 3, 11.

⁹³ On Abaris (XIV F 5, perhaps also 4), possibly again an aetiology, cf. *FGrH* 3 b (Suppl.) I 83.

⁹⁴ With Conomis (1961), 141, cf. Hansen (1975), 58 9.

⁹⁵ Plut. *Mor.* 842 E F, Dion. Hal. *Din.* 11. 14 15.

⁹⁶ The situation is not entirely clear. The usual assumption is that the two speeches were delivered one each at the original impeachment in the assembly (cf. Hyp. 2. 3) and at the trial resulting from it (cf. Conomis 1961, 129). This assumption is followed here. However, Lycophron does not refer to Lycurgus when he speaks about the argument of X/XI F 2, the preservation of democracy (Hyp. 2. 12–13). The possibility that this quotation is from a speech Lycurgus wrote for Ariston, the main prosecutor, can therefore not be ruled out completely.

οὐ γὰρ ὅσιον <τὸν> τοὺς γεγραμμένους νόμους, δι' ὧν ἡ δημοκρατία σώζεται, παραβαίνοντα, ἐτέρων δὲ μοχθηρῶν ἐξηγητὴν ἐθῶν καὶ νομοθέτην γενόμενον ἀτιμώρητον ἀφεῖναι.

It is not righteous to let a man go unpunished who has broken the written laws, which preserve the democracy, and has been the exegete and legislator of other evil practices.

The ideas of morals and the welfare of the state are combined: the laws preserve democracy; transgressing them is not righteous (οὐχ ὅσιον), and so is becoming the exegete and lawgiver of bad customs. The Greek terms link ethics with religion. The sarcastic choice of the word 'exegete'⁹⁷ makes Lycophrone a 'false priest', someone who ought to give advice on acting according to the sacred laws but does the opposite. So even though Lycurgus probably concentrated on the political implications of adultery, by way of language he subtly introduces a religious element to the issue. He also seems to have operated with mythical and historical examples of adulteresses and virtuous women, as is suggested by references to the basket-bearers, noble virgins in the service of Athena at the Panathenaea (in this case probably the sister of the tyrant-slayer Harmodius), and the daughters of Hyacinthus, who (though foreign) were sacrificed for the security of Athens (X/XI F 7, 10).

What becomes clear is Lycurgus' consistency in the use of certain elements and motifs in all his speeches.⁹⁸ Religion, morals, the state, and patriotism appear in many connections and reinforce each other. It seems that in some instances of trials in which morals or religion are not part of the alleged offence in the first place, Lycurgus transforms the charges so as to give himself an opportunity to include these themes. The two spheres are interlinked, and it depends on the occasion which is dominant: in the assembly speeches, the state is depicted as influencing cult practice; in the forensic ones, religious norms define the acceptable conduct of the citizens. Myths (along with quotations from poets) serve as a guideline for moral behaviour. Lycurgus explicitly introduces his examples as a means of education:⁹⁹

βούλομαι δὲ μικρὰ τῶν παλαιῶν ὑμῖν διελθεῖν, οἷς παραδείγμασι χρώμενοι καὶ περὶ τούτων καὶ περὶ τῶν ἄλλων βέλτιον βουλευέσεσθε. τοῦτο γὰρ ἔχει μέγιστον ἡ πόλις ὑμῶν ἀγαθόν, ὅτι τῶν καλῶν ἔργων παράδειγμα τοῖς Ἑλλήσι γέγονεν.

I wish to tell you some brief stories about our past. If you use these examples, you will make better decisions about both the present and other issues. Our city has the great distinction that it is a shining example of noble deeds for the Greeks.

⁹⁷ On the superiority of the manuscript reading over *εἰσηγητής* cf. Conomis (1961), 132 3. The use of the word is similar in Dem. 35, 17, cf. Andoc. 1. 124.

⁹⁸ Cf. Mikalson (1998), 24 5. Of the speeches that have not been mentioned so little is extant that nothing sensible can be said about them. IX F 2, however, refers to the erection of temples as an important political measure; IX F 3 is a strong allusion to Demades' lack of patriotism (cf. Dem. 19. 128). The speech *Against Euxenippus* probably contained an argument on the religious dimension of the case (cf. Hyp. 3. 15 18).

⁹⁹ §83, cf. also §§95, 101 and Spina (1980 1), 22 7.

Not every speech (at least in their fragmentary state) shows all these elements, but it is possible to detect a general tendency to which all these elements contribute. The basic lesson in several trials is respect for the gods and for the fatherland. This is in agreement with Lycurgus' general policy of a return to traditional values and institutions.¹⁰⁰ The speeches in purely religious matters may not have been at the core of this strategy. However, they gave him the opportunity to re-enact Athenian history, to present his version of the past and to insist on its relevance for the present. In this way, by demonstrating his own expertise, he could also legitimize his dealing with religious affairs in politics as well as his recourse to the same ideas in his public speeches. In the speech *On the Priestess* he might also have defended the privileges of a religious official against 'secular' magistrates trying to enlarge their field of competency.¹⁰¹

The speeches are a means in the propagation and implementation of this policy: they provide him with the stage on which he can present his ideas and render an account of what he has done. The two reasons why he can combine the two spheres in his speeches are his pedigree and personal standing on the one hand, and the consistency with which he exploits the motifs on the other.

Lycurgus was a leading figure both in politics and in the religious life of Athens. He had the expertise to speak on religious matters and the credibility to talk about patriotism. It is not possible to decide whether it was because of his affiliation to the Eteoboutadae that he promoted the policy of 'total re-education' of the Athenians with its tendency 'to link political matters with religious ones in particular, in a way so that they constitute not only a formal unit'.¹⁰² He might also simply have exploited his competence in this field for propagandistic purposes. In any case, his adopting a particular mode of argument was not an ephemeral tactic of his to win a case. Instead, he had a special, unusually austere and severe style by which he did not need to please the people and confirm their views, but could appear as moral authority independent of the short-lived wishes and ideas of the masses.¹⁰³ Such a strategy could hardly work if the speaker did not have the authority and if the audience believed that this was a strategy adapted to the occasion. Lycurgus' consistency is confirmed by the comments of those who could still read all the speeches.

If we can trust *Against Leocrates* (and some of the fragments support this view), Lycurgus generally depicts the gods as playing an active role. They intervene in human affairs – at least in the myths and anecdotes, which are even used as a proof of divine activity in Lycurgus' own time (§96). This element is an

¹⁰⁰ In truth, Lycurgus did not flinch from introducing a new form of administration and new cults, so probably Agathe Tyche, cf. Mossé (1989), 28.

¹⁰¹ Cf. Conomis (1961), 109.

¹⁰² Wirth (1999), 48 'totalen Umerziehung', 33–4 'politische besonders mit religiösen Angelegenheiten nicht nur formal zu einer Einheit verbinden'; the allusion to 20th-c. totalitarianism, however, probably does not do justice to Lycurgus.

¹⁰³ Allen (2000) assumes that Lycurgus tried to change Athenian political views radically towards Platonic notions. It seems doubtful to me if he intended to transform the role and image of Athenian prosecution in general by introducing a 'new voice' in that office.

undisputed fact for Lycurgus, as it was for the speaker in *Against Andocides*. The motif of pollution, however, cannot be detected anywhere in the speeches: exclusion from precincts and the like occurs as a merely social phenomenon, as the expulsion from the community Leocrates has let down; it is not treated in connection with misbehaviour against the gods and their sanctuaries.

Lycurgus can thus be viewed as an example of consistent but selective use of religious arguments. As far as we can see, he uses religion in his speeches as a device to introduce norms of (mainly patriotic) behaviour. The key motifs concern the relation between the gods and the city, but the dikasts too can be subject to divine sanctions.

For Lycurgus, we are in the unique position of knowing details of his domestic policy. This allows us to discover how closely an orator's style and arguments must actually have been related to his political activity.¹⁰⁴ He might be the most obvious case of an ethos consistent throughout one's whole public career.

AESCHINES

For Aeschines we are not only in the helpful position that we have the opponent's counters to two of his three speeches. Demosthenes also refers to speeches Aeschines had given on other occasions, and he evaluates Aeschines' style and some of his arguments. For these reasons, the differences between him and Demosthenes can be seen more clearly than that of any other pair.

Arguments Based on Pollution

In contrast to Lycurgus, Aeschines relies heavily on the motif of pollution, using it against his opponents in all his extant speeches. He attacks them by describing crimes or misconduct in a way that implies their being defiled. In the case of Timarchus, who is accused of prostituting himself, this tactic may seem close to hand since the charge is one that implies objectionable sexual behaviour (and thus a form of physical pollution). However, in his other speeches, too, Aeschines finds ways to leave his opponent with the taint of impiety and pollution: crimes and failings in the performance of rituals are the alleged main sources of Demosthenes' religious guilt.

Timarchus, so says Aeschines, performed actions that disqualified him for an honourable standing within the city. By renting himself out he lost essential civic rights, above all the right to speak in the assembly. Aeschines makes it quite clear that the statute ordering expulsion from the political heart of the city was a demonstration of moral disapproval and of the exclusion of undeserving and dishonourable elements. As an analogy he refers to adulterous women whom

¹⁰⁴ Cf. Allen (2000), 17 on Lycurgus' making himself a 'symbol of positive ethical values'. Sawada (1996), 77 regards 'indoctrination in patriotism' as the key element in Lycurgus' reforms.

Solon excluded from public sacrifices: this rule concerned the women's orderliness (*εὐκοσμία*) and was to prevent others from being corrupted when associating with the fallen woman (1. 183–5).

A little later, when he talks about the exclusion of male prostitutes from priesthoods, the purpose is different: Aeschines suggests that this measure has been taken for the sake of purity: the man is disqualified for having an unclean (*οὐ καθαρὸν*) body (1. 188). This is more than just an issue of morality, for Aeschines complains that possibly such a man may draft a decree that includes prayers to the Eumenides. Therefore, Aeschines' point is not just a general condemnation of such behaviour, but its impact on the status of the male prostitute in a ritual context. He even goes so far as to link political activity of a (sc. polluted) male prostitute to the calamities happening to the state:

καὶ ὡς ἔοικεν ὁ αὐτὸς οὗτος ἀνὴρ ἱερωσύνην μὲν οὐδενὸς θεῶν κληρώσεται, ὡς οὐκ ἂν ἐκ τῶν νόμων καθαρὸς τὸ σῶμα, γράψει δ' ἐν τοῖς ψηφίσμασιν εὐχὰς ὑπὲρ τῆς πόλεως ταῖς σεμναῖς θεαῖς. εἴτα τί θαυμάζομεν τὴν κοινὴν ἀπραξίαν, τοιούτων ῥητόρων ἐπὶ τὰς τοῦ δήμου γνώμας ἐπιγραφόμενον;

Evidently this same man, who will not be allowed to obtain the priesthood of any of the gods, since his body is not clean as the laws require, will draft in the text of decrees prayers to the Solemn Goddesses for the good of the city. Then why be amazed at the failure of public policy, when speakers like this man attach their names to decisions of the people?

It may be remarkable that Aeschines does not bring this threat forward in the form of a statement but only as a rhetorical question. Despite the clear allusion to the idea that Timarchus' pollution causes disaster, he avoids mentioning pollution explicitly or making an affirmative statement that resolutions were marred by the name of Timarchus and the goddesses turned away from the city.¹⁰⁵ Even so Aeschines' argument cannot be explained without drawing on religious concepts.

It is not possible to say whether the legislator's intention when he excluded adulterous women and male prostitutes from the sacred institutions of the city was based primarily on moral, religious, or other reasons. What is certain is that Aeschines exploits the morally reprehensible deed in its religious as well as social significance.¹⁰⁶ He does not bring forward all aspects in one example, but treats the fallen woman and the would-be priest separately, saving the clearly religious allusions for the case that is closer to Timarchus'.¹⁰⁷ In this way Aeschines adds a new component to Timarchus' 'guilt': he has not only spoken in the assembly although he was not allowed to; being physically polluted he has brought a religious stain on himself and then even put the whole city in danger.¹⁰⁸

¹⁰⁵ Cf. Fisher (2001), 345–6.

¹⁰⁶ Cf. Parker (1983), 96–7.

¹⁰⁷ On ways in which the paragraph is linked with other statements on Timarchus cf. Fisher (2001), 344–6.

¹⁰⁸ Earlier on, the same idea is expressed in very similar words: presenting the law on male prostitutes he says in asides that these are excluded from political offices and priesthoods because the

In the *Parapresbeia* speech, Demosthenes is called polluted because of his involvement in the Aristarchus affair: he helped kill Nicodemus and, having done so, entered the Agora when unclean (again οὐ καθαρός, 2. 148). This remark is not much more than an aside. Ten paragraphs later, however, Demosthenes is said to be someone who brings (or brought) pollution on himself, a προστρόπιος.¹⁰⁹ It is unclear whether this still refers to the murder of Nicodemus. Even if that connection was not picked up, the immediate context provides a link to another attempt on a man's political, if not physical, life:¹¹⁰ Aeschines has just spoken about the symposium, where, according to Demosthenes, he had flogged a woman from Olynthus (Dem. 19. 196 8). By his rhetorical tricks, which were offensive to the divine sphere (ἀνόσιον), he had tried to persuade the Olynthian Aristophanes to testify to his story of Aeschines' atrocious conduct, and Demosthenes himself had complained about it with his likewise ἀνόσιον voice (§§156 7). So if the audience had believed this tale, Aeschines complains that he would have been done for or, literally, destroyed. Demosthenes is presented as trying to kill the innocent Aristarchus, and thus not afraid to inflict blood-guilt upon himself, and to ruin, if not kill, Aeschines by all means. This denigration is combined with the warning that Demosthenes might become a προστρόπιος of the city and the appeal to the citizens to rid themselves of him (§158):

οὐκοῦν εἰ ὑμεῖς αὐτῷ ἐπιστεύσατε, ἢ Ἀριστοφάνης μου συγκατεψεύσατο, ἐπ' αἰσχροῖς αἰτίαις ἀδίκως ἀπωλόμην ἄν. ἔασετε οὖν τὸν τοιοῦτον αὐτοῦ προστρόπιον (μὴ γὰρ δὴ τῆς πόλεως <γε>) ἐν ὑμῖν ἀναστρέφεισθαι; καὶ τὴν μὲν ἐκκλησίαν καθαίρετε, ἐν δὲ τοῖς ψηφίσμασι διὰ τούτου τὰς εὐχὰς ποιήσεσθε καὶ στρατίαν ἢ πᾶσιν ἢ ναυτικὴν ἐκπέμψετε;

Now if you had believed him or if Aristophanes had supported his lie, I would have been done for unjustly on shameful charges. So are you going to let a man who brings down pollution on his own head (not on the city, I hope) live among you? You purify the assembly; will you include prayers in your decrees on this man's proposals when you send out an army or a fleet?

Letting him pray on behalf of the city is contrasted with regular cleansing procedures in the assembly. In this way, it becomes obvious that Aeschines does

offices are στεφανηφόροι and the persons οὐ καθαρεύοντες (1. 19). Since Aeschines does not add anything on the consequences, it is possible – depending on the expectation and predisposition of the individual listener – to interpret this remark as emphasizing the dignity of the office and the despicable nature of the prostitute. However, the crown is a symbol of sacredness. A combination of both aspects may be seen in 1. 164 where a coronation is juxtaposed with entering the Agora – a political but sacred space.

¹⁰⁹ For the meaning of the word and the restoration of the text cf. Paulsen (1999), 401.

¹¹⁰ In the kind of εὐθυναί procedure Aeschines is undergoing, the penalty was not fixed as in others (either the sum embezzled or the tenfold), but was decided on by the dikasts in a second vote if they had convicted the defendant. Aeschines here alludes to the possibility that he may be sentenced to death. Cf. §§126 7, Arist. *Ath. Pol.* 48. 4 5 with Rhodes (1981), 563, 722 5, 734 and below, p. 173.

not use the term *προστρόπιος* as mere abuse but in its regular meaning referring to pollution contracted by a murder.¹¹¹ So even if Demosthenes cannot be said to be making an attempt on Aeschines' life, the language at least insinuates that he would do so if he could. The passage is concluded by two lines from Hesiod: 'Many a time a city has paid for an evil man who trespasses against divine right (*ἀλιτράινω*) and devises sacrilegious acts (*ἀτάσθαλα*).'¹¹² It is clear that in these words too lies religious significance and that the description is that of an impious person.

Aeschines thus does not confine himself to depicting Demosthenes as an evildoer or as someone who is incompatible with the community; Demosthenes is presented as engaged in actions which pollute him and may even be dangerous for the whole city. This danger is not passed over in this instance, but made explicit, though not described in detail. The motif Aeschines unfolds in his *Against Ctesiphon* is already present in a nutshell. It is made the dominant theme of the religious argumentation in the later speech, but even in 343 Aeschines applies the motif of the harm a man's evil actions do the city against Demosthenes, though in a rather unspecific way.

The existence of that *topos* even before Chaeroneia accounts for the ease with which it could develop after 338 and with which Aeschines could take it up in his last speech. But the continuity goes even further: the same lines from the *Works and Days* are quoted again in the context of the most serious accusation of pollution against his opponent. This time, Aeschines adds the following lines: 'Upon them (sc. the citizens) Cronus' son brings great woe, famine, and plague together, and the people perish. He may destroy their vast army on the walls or take vengeance on their ships at sea, far-seeing Zeus' (3. 135). In this central section of his third speech, he exploits the idea that Demosthenes causes the bad luck of Athens by being polluted. He opens the narrative of Demosthenes' activity between the start of the war to Chaeroneia by saying that Demosthenes had ruined Greece (3. 106):

Δημοσθένης ἀπώλεσε τὰς τῶν Ἑλλήνων καὶ τῆς πόλεως πράξεις, ἀσεβήσας μὲν εἰς τὸ ἱερὸν τὸ ἐν Δελφοῖς, ἄδικον δὲ καὶ οὐδαμῶς ἴσην τὴν πρὸς Θηβαίους συμμαχίαν γράψας.

Demosthenes spoiled the efforts of Greece and our city by committing impiety against the temple at Delphi and proposing an unjust and completely unequal alliance with Thebes.

The explanation of the first accusation is Demosthenes' assistance in the illegal exploitation of sacred land by accepting bribes from the Amphissians: in return

¹¹¹ Cf. Hesych. s.v. and Hatch (1908), 182 3, who, however, does not realize the connection to murder in Aeschines' words. The explanation in P.Oxy. XV 1804 fr. 1 col. 19 11 (CLGPAeschin. 2) is too vague (and the text uncertain); so is Schol. Aeschin. 2, 345. No merely abusive employment of the word is attested in extant literature down to Aeschines' time.

¹¹² Hes. *Op.* 240 1. In contrast to *ἀλιτρός*, *ἀλιτράινω* is nowhere attested in a non-religious, metaphorical sense. This and other words in the context belonging to the religious register confirm the religious meaning of *ἀτάσθαλα* for these lines, cf. *LfggE* s.vv.

for helping them prevent the issue of the 'cursed harbour', which they used in contravention of decrees of the amphictyonic council, from being raised. Since the harbour is consecrated and cursed (ἐξάγιστον and ἐπάρατον, cf. 3. 107, 113, 119), the money Demosthenes receives is ἐξάγιστον and ἐπάρατον too (3. 114), because it has been earned by the use of the harbour.¹¹³ As a consequence misfortune befalls everyone and everything in contact with Demosthenes (literally: 'whatever he touches', 3. 114). The idea of Demosthenes' contagiousness is expressed clearly: because of his impious acts he is a danger for his environment.¹¹⁴

In a digression Aeschines inserts the history of the First Sacred War and the amphictyonic oath.¹¹⁵ He does so not just in order to explain the background of the harbour being cursed, as an introduction to why Demosthenes is impious. He also contrasts Demosthenes' acting in favour of the Amphissians his offences against the gods (3. 106) with the righteous and pious behaviour shown by himself (in the succession of Solon, §108) in his intervention at the session in 340/39.

He refers to other failings by Demosthenes in religious matters, many of which caused disaster for Athens.¹¹⁶ Demosthenes, he says, even resists the intentions of the gods a point that is described as a constant factor in his career early on in the speech.¹¹⁷ More than that, at the end of the section on Amphissa Aeschines presents the cases of others in which he establishes a connection between offences against the gods on the one hand and a bad condition or failures in the present on the other: the reckless Persians are being conquered by the son of Philip, who had liberated the temple of Delphi; at the same time, the destruction of Thebes is explained as the result of heaven-sent infatuation (θεοβλάβεια) and folly.¹¹⁸ Thus Aeschines repeatedly presents the idea of wrongdoing against the gods which results in downfall. In this way he can interpret Hesiod's lines as an 'oracle' on Demosthenes, applying the general ideas of that text to the particular case of this statesman.

So the reason Aeschines offers for Athens' downfall on the human or political level is only part of the full picture: Demosthenes' policy has been contrary to the

¹¹³ There is no evidence of these words' being an official formula or in any way technical terms: neither of them can be found in Delphic inscriptions, and in Athens ἐξάγιστος is only used for movable objects (e.g. SEG 34. 115 16), while ἐπάρατος is applied only to people (IG ii². 1055. 19, 1121. 25, SEG 30. 80, all later than the 4th c.).

¹¹⁴ Aeschines suggests that Demosthenes had already had this negative influence, which only increased with the ἀσέβεια of Amphissa. He does not say why this was the case, but from the rest of the speech we may (if necessary) assume that it was the notoriety of Demosthenes' perjury and general despicableness Aeschines tries to show.

¹¹⁵ On this oath as a piece of 4th-c. fiction cf. Sánchez (1997).

¹¹⁶ Demosthenes denounces the Pythia as a partisan of Philip and sends out the army despite bad omens (3. 130 1). He opposes the intentions of the πόλις to act according to the principles of εὐσέβεια and makes it despise its old oath, curse, and oracle (3. 127).

¹¹⁷ 3. 57, in the context of Amphissa: 3. 129, but also more generally in 3. 130 1.

¹¹⁸ Aeschin. 3. 132 3.

interest of the state, but he has also violated divine law and polluted himself. Aeschines insists that there is a bad *τύχη* following Demosthenes (e.g. 3. 157), spreading to and infecting those in contact with him.

In some instances, Aeschines does not content himself with criticizing Demosthenes' public actions, but refers to a mixture of public and private misconduct. He attacks Demosthenes' private life by branding him as a *κίναϊδος* (2. 151) and thus physically impure. In *Against Ctesiphon* we see Demosthenes being blamed for having performed an irregular thanksgiving sacrifice after Philip's death. On the seventh day after his daughter had died, 'before he had mourned her and performed *τὰ νομιζόμενα*', that is before the end of the traditional mourning period, 'he put on a crown and white clothing and sacrificed oxen in violation of tradition' (*παρανομεῖν*, 3. 77). Aeschines draws on the concept that death in one's household pollutes for a certain time. Until the completion of the burial rites (in Athens on the ninth day) the relatives of the deceased are in a marginal state outside society associated with their being polluted.¹¹⁹ Aeschines then gives the narrative a twist and makes it a complaint about Demosthenes not being a good loving father (3. 78): 'I am not blaming him for his misfortune but exposing his character. For a bad father who hates his children could never be a good public leader; and a man who does not love his nearest and dearest will never feel concern for outsiders like yourselves; nor could a man who is evil in private life be of use in public life; and a man who is worthless at home can never have been a man of honour as envoy in Macedonia.' However, the allusion to impurity, preceded by the allegations of perjury and the false claim of divine authority on the basis of an alleged epiphany, clearly gives the remarks a religious significance. Aeschines works with the same elements as in *Against Timarchus*: the crown, cultic activity, and the state of pollution. Negative consequences are not mentioned, but Aeschines shows how Philip's death was celebrated in a foul way. It serves to illustrate Demosthenes' character as well as the wickedness of his political activity, and describes him as transgressing the rules of the ritual: for one thing (apart from being a bad father), he does not care about *τὰ νομιζόμενα* and is immoderate in his 'triumph' over the dead Philip. And the means he uses to achieve his goals are more than questionable which also casts a negative light on his political goals as such.

Further Violations of Religious Rules

Even when pollution is not obviously implied, Aeschines constantly accuses his opponents of conduct irreconcilable with religious rules. Dispatching troops, for example, despite bad omens proves detrimental to Athens (3. 131, 152). The

¹¹⁹ On the Enata cf. Isae. 2. 36 7, 8. 39, Aeschin. 3. 225. On the status of the relatives Parker (1983), 35 8 with n. 17, Morris (1987), 29 32 (not concentrating on classical Athens). A crown, as it is used for non-chthonic sacrifices, must not be worn in a context of death, cf. Blech (1982), 359 60.

most frequent feature, however, is the violation of oaths. Aeschines clearly refers to oaths as religious procedures. This means he does not just stress that people who do not stick to their sworn promises and statements are unreliable or have a bad influence on the cohesion of the community.

In *Against Timarchus*, a couple of people are summoned to give evidence. Aeschines has obviously drafted the depositions in such a way that the witnesses would compromise themselves if they confirmed them. So they take the oath of exemption, the *ἐξωμοσία*, by which witnesses claimed to have no knowledge of the matter. The *ἐξωμοσία* is normally consciously provoked by the litigant: he does not expect or even want the witness to confirm the deposition.¹²⁰ In the present speech, Misgolas is called to testify that he had a sexual relationship with Timarchus (1. 45–50). We do not hear whether he did so, but it is in any case likely that he refused to confirm the claim.¹²¹ Aeschines prepares the audience for an *ἐξωμοσία* by discrediting Misgolas for it in advance: the possible failure to testify to the truth of the deposition will show that neither does he fear the gods nor is he ashamed before his friends and fellow citizens (1. 50). The religious dimension of the oath, the danger of offending the gods and provoking a reaction, is juxtaposed with the social significance of a refusal to confirm the deposition.

Hegesander too, as Aeschines will have known, is going to deny the allegations of his having had a sexual relationship with Timarchus. Whether they be true or not, Hegesander cannot confirm the testimony, simply to keep his dignity and his standing in the city. However, Aeschines, claiming that the statement contains the truth, interprets his *ἐξωμοσία* as an act of perjury. He uses it as a demonstration of how deep one falls with Timarchus' or Hegesander's lifestyle. Hegesander shows no respect for the gods and disregards the laws and thinks little of shame (1. 67):

οὐκοῦν καὶ αὐτὸν ὑμῖν καλῶ τὸν Ἡγήσανδρον. γέγραφα δ' αὐτῷ μαρτυρίαν κοσμιωτέραν μὲν ἢ κατ' ἐκείνον, μικρῷ δὲ σαφεστέραν ἢ τῷ Μισγόλῳ. οὐκ ἄγνοῶ δ' ὅτι ἀπομείνεται καὶ ἐπιорκήσει. διὰ τί οὖν αὐτὸν καλῶ; ἵν' ὑμῖν ἐπιδείξω οἷους ἀπεργάζεται ἀνθρώπους τὸ ἐπιτήδευμα τοῦτο, ὡς καταφρονούντας μὲν τῶν θεῶν, ὑπερρώντας δὲ τοὺς νόμους, ὀλιγώρως δὲ ἔχοντας πρὸς ἅπασαν αἰσχύνην.

So then, I shall call Hegesander in person for you. I have drafted for him a deposition more decent than his character but a little more explicit than the one for Misgolas. I am aware that he will swear the oath of exemption and lie on oath. Why, then, do I call him to give the testimony? To show you the way this practice affects the characters of men, how contemptuous of the gods they become, how disrespectful of the laws, how indifferent to every source of shame.

Aeschines thus suggests that Hegesander will perjure himself and, more than that, that this behaviour has become normal for him as his habit of living with a

¹²⁰ Cf. Martin (2008) and below, n. 123.

¹²¹ Cf. Fisher (2001), 183.

male prostitute has changed his mindset. The decline of moral standards and piety are blurred in one single image of decadence.

In two other speeches witnesses are summoned and refuse to testify. In both instances, the litigant then produces other witnesses who disprove the alleged lack of knowledge. Once in the *Paraprosbeia* speech Demosthenes threatens to do so.¹²² Since all these references to the *ἐξωμοσία* occur in prosecution speeches, one might suppose that its enforcement was a device to impede the defendant's plea and discredit his witnesses in case he called them too.¹²³

In comparison with the *ἐξωμοσία* of ambassadors (cf. p. 57), that of witnesses denying knowledge of the matter at issue seems to have been a more serious matter.¹²⁴ But even among the recognizable instances of *ἐξωμοσία* Aeschines' treatment sticks out: twice elsewhere an *ἐξωμοσία* is described as perjury, but in neither case is this fact exploited further. The allegation of perjury is not used as a means of attacking the witnesses. It is only Aeschines who denigrates witnesses on grounds of their lack of respect for the gods and their depravity. Since there is no refutation of the *ἐξωμοσία*, the depositions do not contribute to finding the truth but rather to making a moral judgement on the witnesses' character. At the same time, Aeschines can sneer at Timarchus himself, since they are (alleged to be) his company. So again he consistently exploits religious elements in the legal procedure.

Timarchus is presented as having perjured himself on an earlier occasion. This time, Aeschines does not treat the motif of perjury as indicative of the offender's attitude towards the city. According to him, Timarchus was bribed in connection with the *διαψήφισμα*, the census of the full Athenian citizens; but then he swore that he had not accepted and would not accept bribes, completing the full ritual of oath-taking (1. 114–15):

φήσας γὰρ Φιλωτάδην τὸν Κυδαθηναῖα, εἶνα τῶν πολιτῶν, ἀπελεύθερον εἶναι ἑαυτοῦ καὶ πείσας ἀποιψηφίσασθαι τοὺς δημότας, ἐπιστάς τῇ κατηγορίᾳ ἐπὶ τοῦ δικαστηρίου, καὶ λαβὼν εἰς τὴν ἑαυτοῦ χεῖρα τὰ ἱερά καὶ ὁμόσας μὴ λαβεῖν δῶρα μηδὲ λήψεσθαι καὶ ἐπομόσας τοὺς ὀρκίους θεοὺς καὶ ἐξώλειαν ἐπαρασάμενος ἑαυτῷ, εἰληφὼς ἡλέγχθη παρὰ Λευκωνίδου τοῦ Φιλωτάδου κηδεστοῦ διὰ Φιλήμονος τοῦ ὑποκριτοῦ εἵκοσι μνᾶς, ὥς ἐν ὀλίγῳ χρόνῳ πρὸς Φιλοξένην ἀνήλωσε τὴν ἐταίραν, καὶ προὔδωκε τὸν ἀγῶνα, καὶ τὸν ὅρκον ἐπιώρκησεν.

¹²² Isac. 9. 18–19, Dem. 19. 176, 45. 59–61.

¹²³ Since witnesses swore that they had no knowledge of the matter, it may have been almost unacceptable that the same witness should speak about the same affair again without some protest. However, this seems to have happened, cf. Aeschin. 1. 69, Dem. 57. 36. Witnesses were not meant to be impartial, accidental by-standers, cf. Humphreys (1985*b*), Todd (1990*b*).

¹²⁴ The oath was taken at the same stone as the archons' oath of office, holding parts of a sacrificial victim: Arist. *Ath. Pol.* 55. 5. Thus it has an extra feature that makes it stronger, even though it is not quite as solemn as that at the Palladium, cf. below. Thür (2005), 167–8 shows that taking the *ἐξωμοσία* in court is not possible. Lycurg. 20 is an exception that does not disprove this rule, because in an *εἰσαγγελία* there was no pre-trial.

[Timarchus] claimed that Philotades of Cydathenaeum, a member of the citizen body, was a freedman of his and persuaded the deme members to reject him; he presided over the case for the prosecution in the court and, taking the sacrificial victims in his hand, swore that he had taken and would take no bribes, swearing by the gods who watch over oaths and calling down destruction on himself. But it was proved that he had received twenty minae from Leuconides, Philotades' in law, by way of Philemon the actor, money that he spent in a short time on the courtesan Philoxene; so he abandoned the case and perjured himself.

By describing the ceremonial act of touching the *ἱερά*, Aeschines stresses the solemnity of the oath and its religious dimension. By envisaging the ceremony and its ritual elements he highlights its religious significance. Timarchus is thus not explicitly said to have polluted himself, but is still portrayed as an offender against divine law.

In the two examples of *ἐξωμοσία*, one may recognize a tactical manoeuvre by Aeschines to conceal his complete lack of witnesses: his way out is to produce testimonies which cannot be confirmed by the witnesses without a loss of face and to exploit their oath of exemption as perjury. It seems to prove not the unfoundedness of the allegations, but rather something that goes beyond everything their confirmation would have proved: their total indifference not only towards the views of the society but also towards the divine sphere. In Timarchus' case perjury adds the idea of outright impiety to the description of impurity. Whereas prostitution is not itself offensive to the gods, as long as polluted people stay away from sacred places, perjury gives Aeschines the opportunity to present an openly impious act by Timarchus. He can thus supplement the characterization of his opponent with a new trait that also fits into the general picture of moral depravity.

While in *Against Timarchus* Demosthenes (who acted only as supporting speaker) is not linked with perjury or any acts of impiety, the picture changes in Aeschines' other speeches, where he is practically the main opponent. Perjury is presented as Demosthenes' constant occupation. In *On the False Embassy*, Demosthenes is polemically denied the ability to speak the truth. Instead, he is said to introduce all his lies by an oath (2. 153). When he touches on Demosthenes' allegation that he had driven Critobulus from the oath ceremony at the conclusion of the peace,¹²⁵ Aeschines digresses on the formal oath and curse in the Palladium by which the winner of a trial had to affirm that he had spoken the truth.¹²⁶ He links this oath with the present case because, it has to be understood, in both cases lies of the prosecutor's could lead to the innocent defendant's death.¹²⁷ In this way, he directs the audience's attention to the

¹²⁵ Critobulus was the emissary of the Thracian king Cersobleptes, whom, according to Demosthenes, Aeschines tried to exclude from the treaty between the Athenian alliance and Philip. The passage Aeschines refers to must, however, have been deleted by Demosthenes before publication.

¹²⁶ Aeschin. 2. 87, cf. Ch. 4 on Dem. 23. 68 9, 71.

¹²⁷ Cf. above, n. 110.

possible consequences of a conviction. He states that if he can disprove Demosthenes' allegation, he will be allowed to call his opponent unclean (*μὴ καθαρεύων*) with regard to his body, including his mouth.¹²⁸ Thus the idea of defilement, introduced first in the context of homicide trials, is then extended to a form of trial less closely connected with pollution and finally to Demosthenes' alleged physical impurity.

In *Against Ctesiphon* the allegation of an offence against the gods is clearest when Aeschines claims that Demosthenes has lost his credibility with the *dikasts* by his lies. He says that Demosthenes 'finds perjury the most natural thing in the world' (3. 207). If his opponent resorted to an oath, he asks the jury to remind him 'that a man who perjures himself repeatedly yet always demands to be trusted because of his oaths must rely on one of two things, either new gods or a different audience'.¹²⁹ In these words, Demosthenes is openly accused of total contempt for the gods. The religious character of the oath procedure is again stressed (as in 1. 114) in Aeschines' sarcastic remark that the only purpose of Phidias' statue of Athena was to provide Demosthenes with something to perjure himself by (3. 150).

With this rather large number of references to perjury and impiety, one may be inclined to assume religious significance even in denigratory remarks that did not seem to have religious undertones when made by Demosthenes. The latter had had Anaxinus, a man allegedly making purchases for the Macedonian queen Olympias, arrested, tortured, and executed. Aeschines now claims Demosthenes had a bond of hospitality with this man and therefore calls him his host's murderer (*ξενοκτόνος*; 3. 224):

καὶ τὸν αὐτὸν ἄνδρα δις στρεβλώσας τῇ σαυτοῦ χειρί, ἔγραψας αὐτὸν θανάτῳ ζημιῶσαι, καὶ παρὰ τῷ αὐτῷ ἐν Ὠρεῶ κατήγουν, καὶ <ὦ> ἀπὸ τῆς αὐτῆς τραπέζης ἔφαγες καὶ ἔπιες καὶ ἔσπεισας, καὶ τὴν δεξιὰν ἐπέβαλες ἄνδρα φίλον καὶ ξένον ποιούμενος, τοῦτον ἀπέκτεινας καὶ περὶ τούτων ἐν ἅπασιν Ἀθηναίοις ἐξελεγχθεὶς ὑπ' ἐμοῦ καὶ κληθεὶς ξενοκτόνος, οὐ τὸ ἀσέβημα ἡρνήσω, ἀλλ' ἀπεκρίνω, ἔφ' ᾧ ἀνεβόησεν ὁ δῆμος καὶ ὅσοι ξένοι περιέστασαν τὴν ἐκκλησίαν.

And this same man [Anaxinus] you tortured twice with your own hand and proposed that he be punished with death; with that same man you lodged at Oreus and ate, drank, and poured libations from the same table and clasped right hands and treated him as a friend with ties of hospitality – this man you killed. And when you were exposed for these acts by me among the whole Athenian citizenry and were declared your host's murderer, you did not deny your impious crime but gave an answer that made the people and all the foreign observers at the assembly cry out.

The word *ἀσέβημα* suggests that Aeschines tries to present Demosthenes' action as an offence against Zeus Xenios.¹³⁰ So even if *ξενοκτόνος* and the references to

¹²⁸ Worman (2004), 8 completely forgets the ritual meaning of the term *καθαρεύειν* when she interprets the references to the mouth in Demosthenes' and Aeschines' speeches. Cf. above, pp. 100, 107.

¹²⁹ Aeschin. 3. 208; for the motif cf. Euphron *PCG* 6.

¹³⁰ Cf. Nilsson (1967–74), i. 419–21; the name of the god, however, remains unmentioned.

Demosthenes' and Anaxinus' eating, drinking, and sacrificing together were not in themselves sufficient to evoke this idea in the audience,¹³¹ Aeschines makes sure the religious significance of dining and sacrificing together is felt and stressed by labelling Demosthenes' behaviour as ἀσέβημα.

Therefore, it is possible that in a speech with a strong emphasis on religious questions (or one by a speaker known for his fondness for religious motifs), the audience may be more inclined to interpret even ambiguous terms like these as indicating impiety. Thus it is possible that a majority of the audience would have understood an even briefer allusion in a similar case as being to an offence against Zeus Xenios or Philios: Demosthenes joined in the prosecution of Anaxinus, with whom Aeschines says he had been 'sharing his table, his sacrifices, and his libations' (3. 52).¹³²

The word *μιαρός*, however, applied to Demosthenes and Timarchus,¹³³ is probably more than just abusive. It only appears after Aeschines has described what the pollution consists in. Still, we find a combination such as 'that polluted and accountable head',¹³⁴ which juxtaposes the religious with a merely political term. In a case like this, the use of *μιαρός* might have an 'atmospherical' function as an expression of disgust rather than as a direct accusation of pollution.¹³⁵

The same might be true even more for the reference to the restoration of the city wall after Chaeroneia. In the course of this work, Demosthenes allegedly destroyed public tombs.¹³⁶ Aeschines does not exploit this point further (apart from the statement that the city did not benefit from this). In *Against Timarchus*, he tells how Pittalacus, angry over his treatment, sits down at the altar of the Mother to arouse the Athenians' attention (1. 60). Timarchus and Hegesander lure him away by promising him recompense. The only religious elements in this story are the altar and some gestures of supplication.¹³⁷ The preceding

¹³¹ Before Aeschines, *ξενοκτόνος* and the verb *ξενοκτονεῖν* occur only in Euripides (*IT* 53, *Hec.* 1247), where impiety does not seem to be the dominating idea. In Pherecydes *FGrH* 3 F 82b (Schol. Hom. Od. 21. 22), the wording is probably that of the scholiast.

¹³² Up to this point in the speech, Aeschines has not launched any attack against Demosthenes on grounds of impiety. The same motif is exploited in 2. 55, 97, 163, 183.

¹³³ 1. 42, 54, 3. 79, 101, 166, 212.

¹³⁴ Aeschin. 3. 212 τὴν μιὰν κεφαλὴν αὐτὴν καὶ ὑπεύθυνον.

¹³⁵ Cf. above, p. 9.

¹³⁶ Aeschines possibly blurs two stages in the reconstruction of the wall, but this does not make any difference, as long as his audience believed him. Immediately after Chaeroneia, the Athenians fortified their walls in a hurry, whereas Demosthenes was superintendent of that work in 337/6. The interpretation that the spolia of the state tombs were built into the walls in that second phase of fortification (cf. Ohly 1965, 305 6) relies entirely on Aeschines. Bähler (2001) argues that tombstones had been used for the Themistoclean layer of the wall for no other reason than the situation of emergency. So there was nothing objectionable to the measure anyway.

¹³⁷ Cf. Gould (1973), 76 (2001), 26 (Pitalacus too is supplicating, *ibid.* 77 8 28 9); Fisher (2001), 199 views the gesture of touching Pittalacus' chin as a mixture of the signs of affection and of supplication. For Naiden (2006, 126 7) the gods are still involved, though agency is 'doubly indirect', as Timarchus has not offended the gods themselves but Athenian norms of supplication, and the punishment is to be taken over by the dikasts. Against what Naiden insinuates, Aeschines does not demand punishment for that act, but again as in Demosthenes, some of the dikasts may have found it necessary to condemn Timarchus for it.

demonstration of Timarchus' pollution, however, might well contribute to the suggestion of impiety or at least make the religious elements more conspicuous.¹³⁸ Thus the reception of narrative details depends on the individual listener, but also on the preparation and general style of arguing of the speaker.

The Role of the Gods

Less important than in Lycurgus or *Against Andocides* are the gods themselves. No immediate or impending action is mentioned; punishment, if suggested at all, is described rather vaguely. Divine powers are most clearly involved in events when Aeschines uses the motif of the general goodwill of the gods towards Athens in *Against Ctesiphon*. They are said to have saved the army in Euboea (3. 88), but, most importantly, they feature as Demosthenes' antagonists as they try to make good the bad luck he brings upon the city (3. 57, 115, 196). They remain anonymous, and the way in which they intervene is not described. The only exceptions are the omens they give at the time preceding the battle of Chaeroneia (3. 131). However, they are only presented as warning the Athenians, not as intervening personally. Their alleged attempts to change the course of events are futile, so in Aeschines' depiction they did not influence Athenian affairs directly at that time. It is enough for Aeschines to point out that Demosthenes is working against them.

Behind Demosthenes, a δαίμων is working to the disadvantage of Greece (3. 157). We surely have to think of it as something more than human, but not quite as a deity. As has been seen, Aeschines is presumably talking of a personal δαίμων.¹³⁹ A similar source of evil seems to have caused the ruin of Thebes, but the idea remains even vaguer than in the case of Demosthenes at 3. 133, referring to god-sent infatuation, θεοβλάβεια, where there is no indication that it was Demosthenes' δαίμων that caused the destruction of the city. Only in the quotation from Hesiod in the third speech is Zeus referred to as agent by name (3. 135). The allegation, however, that a god has intervened personally is not repeated by Aeschines in his own words; nobody is said to be driven to specific (calamitous) actions, either.

There is, however, a kind of argumentation that refers to particular deities that are not among the Olympians. This form of exploitation of the divine stretches over all three speeches. In *Against Timarchus* Pheme is called as a 'witness' against the defendant. Her divine status is argued for by means of quotations from Euripides and Hesiod as well as from Athenian cult (1. 128). That Aeschines

¹³⁸ Naiden (2004), 79–80 stresses that even removal from the altar could be legitimate, provided that it was sanctioned by the state. False promises by private citizens were probably a matter of interpretation.

¹³⁹ Cf. Meuss (1889), 467–8, Sfameni Gasparro (1997), 71 (on the same idea in Plato *ibid.* 74); Aeschines might draw on the vagueness of the term.

probably distorts the meaning of *φήμη* in the latter (as 'gossip' instead of 'rumour/news') has been shown earlier.¹⁴⁰ She too is not described as active in the sense of perceptible interference. Nevertheless, she is viewed as present. Aeschines uses normal court terminology appropriate for men (to offer her as witness, to charge her with false testimony).¹⁴¹ In the *Paraprosbeia* speech, after Demosthenes has turned the argument regarding gossip against him, he does not simply pass over it in his reply, but seems to correct Demosthenes' concept of *φήμη* (2. 144 5). He defends the goddess's worthiness and divine status, expressed by public sacrifices.

In his third speech, Aeschines contrasts Demosthenes as a sycophant and the goddess Peitho ('Persuasion'). The use of the word¹⁴² suggests that it is not an abstract noun but a personification; as such Peitho was well known to the Athenians.¹⁴³ However, the reference to this deity is negative: she is thought of as existent, but absent and not active in this context. At the end of *Against Timarchus*, Aeschines even denies that the gods impel people to commit crimes. There are no deities of revenge (Poinai) driving the ones who commit *ἀσεβήματα* (1. 190), but one's own lusts have this impact. Thus he takes account of the concept of these minor deities, but they remain shadowy. He exploits them according to his needs: once he acknowledges the ideas of ancient didactic poetry, but in another passage he refers to the Poinai as an element from a different religious discourse, namely tragedy.

The gods are thus portrayed as influencing the course of events. However, their role is marginal compared to what we have seen in Lycurgus or *Against Andocides*. There is no impression of constant surveillance or guiding. The warning of interference is mostly kept vague, without a description of how the detrimental consequences are brought about. Aeschines does not refer to any offended deity by name. Instead, he seems to prefer the concept of pollution as a way to single out his opponents as potentially dangerous, contemptible wretches. When employing this set of motifs of denigration, Aeschines tends to blur the distinction between immorality and impiety: Demosthenes' celebrating during the mourning period is both an act that pollutes his surroundings and a sign of his lack of love for his daughter; perjury shows a lack of consideration for society and for the gods; licentious sexual activity disqualifies for prayers on behalf of the state and is a source of disruption of order in the *πόλις*. In the case of Timarchus the connection is all too obvious since here we have a sort of physical pollution. So Aeschines' tactic of religious denigration includes hints of moral inferiority of his opponents.

¹⁴⁰ Cf. Ch. 2 with n. 76.

¹⁴¹ *μάρτυρα παρέχομαι, ψευδομαρτυρίων ἐπισκῆπτεσθαι*, 1. 130.

¹⁴² As object of *τρέφειν* (3. 256).

¹⁴³ Cf. Buxton (1982), 33 5.

Aeschines' Self-Praise

In turn, the display of his own moral superiority and piety seem to be a special concern of Aeschines'. While Lycurgus never speaks of himself other than in an impersonal way, Aeschines is not content to denigrate his enemies in religious terms, but extols himself to a significant degree by display of religious integrity.

He answers apparent attacks on his family background by ostentation and demonstration of his excellence. On the social level, he suggests that he enjoyed the good education of a rich man; he points at (rather feeble) connections of his family with the elite of Athens or his parents' merits during the time of the Thirty.¹⁴⁴ It seems, especially if we consider what we know about his family background, that he overcompensates for his (in comparison to other politicians) rather humble origins.¹⁴⁵

Something similar might be assumed for his standing in the field of religion. His mother and his uncle had minor religious functions,¹⁴⁶ but it is deliberately misleading when he insinuates a link between his father's line and the Eteoboutadae (2. 147):

οὐτοσὶ μὲν ἐστὶ μοι πατὴρ Ἀτρώμητος, σχεδὸν πρεσβύτατος τῶν πολιτῶν ἔτη γὰρ ἧδη βεβίωκεν ἐνενήκοντα καὶ τέτταρα συμβέβηκε δὲ αὐτῷ . . . εἶναι δ' ἐκ φατρίας τὸ γένος, ἣ τῶν αὐτῶν βωμῶν Ἑτεοβουτάδαις μετέχει, ὅθεν ἡ τῆς Ἀθηνᾶς τῆς Πολιάδος ἐστὶν ἱέρεια . . .

This man here is my father Atrometus, almost the oldest of the citizens. He has already lived ninety four years. . . . His family belongs to a phratry that shares altars with the Eteoboutadae, which is where the priestess of Athena Polias comes from . . .

The tortuous description shows that Aeschines is not even in the same cult group as the noble clan, but only shares the altars with them. It is difficult to state whether Aeschines seriously tries to claim religious authority via family ties in this way or whether he is content with namedropping. The most excessive polish is given to Aeschines' image (at least in the speeches against Demosthenes) by reports of his own actions. The accusation that he has joined in the paean at Philip's victory celebration is replied to by a reinterpretation: if he sang at all, it was to the glory of Apollo (2. 163), that is an act of piety. And Aeschines uses the

¹⁴⁴ Cf. Buckler (2000), 133, 138 9. The discussion on the significance of metaphors from wrestling (Lane Fox 1994, 139 against Ober 1989, 283) highlights just one aspect of Aeschines' display of nobility. More important is the way in which he shows off his expertise in poetry (cf. North 1952, 26 7; note also the invocation of *παιδεία* 3. 260, cf. 2. 147) and his connoisseurship in pederasty (1. 136 7, 3. 216), or criticizes the lack of education in others, among them Demosthenes, 1. 166, 3. 130; pride in his pedigree and youthful achievements: 2. 78, 147 8, 169; cf. Harris (1995), 22 5. The portrait of the *δημοτικός* (3. 169 70) can also be regarded as a concealed self-description.

¹⁴⁵ On the social composition of the 'class' of politicians cf. Ober (1989), 117 18.

¹⁴⁶ Cf. Harris (1995), 25 6.

point to emphasize the discrepancy between his own and his opponent's religious conduct.

In the same speech, he recounts his harangues before Philip on the first two embassies. On both occasions, Aeschines seems to have covered the mythical arguments for the Athenians' claim on Amphipolis. In the first instance (2. 31), Aeschines cites himself, mentioning the myths connected with Ennea Hodoi and Acamas,¹⁴⁷ and suggests that at present he is cutting everything short, which means he was by far more copious when actually delivering the speech. At Pella, during the second embassy, Aeschines (in contrast to Demosthenes) was not content with talking about the oath the ambassadors were supposed to administer, but spent most of the speech dealing with the First Sacred War and the Delphic amphictyony. The core of what he said was that Philip should 'give careful thought to the issue of piety' (2. 114). In this context he also retold the story of the foundation of the amphictyony.

We cannot be sure that Aeschines actually mentioned all these topics in his speeches. However, he is keen to make the Athenians in the court believe that he did. Demosthenes confirms this by informing us that Aeschines had already recounted the speech he had given on the second embassy to the assembly on an earlier occasion: Aeschines then stated that he had discussed the *ἀσέβεια* of the Thebans in connection with the Sacred War (Dem. 19. 21):

διδάσκειν γὰρ αὐτὸς ἔφη τὸν Φίλιππον ὅτι οὐδὲν ἦττον ἡσεβήκασιν οἱ βεβουλευκότες τῶν ταῖς χερσὶ πραξάντων, καὶ διὰ τοῦτο χρέμαθ' ἑαυτῷ τοὺς Θεβαίους ἐπικεκρυχέναι.

He claimed that he himself had instructed Philip that those who planned the deed acted impiously no less than those who carried it out with their own hands, and as a result, the Thebans had put a price on his head

The Athenians are to get the impression that Aeschines did not confine himself to arguments of *Realpolitik*. He is not only concerned about piety in his and other people's actions, but shows knowledge of the historical basis of claims and religious regulations at the same time.¹⁴⁸ From the speech *Against Ctesiphon* it is clear that this strategy is not particular to a single speech, but apparently a regular feature. Dealing with the session of the amphictyons in 340/39, Aeschines quotes himself even more extensively. We hear of another old amphictyonic oath and of the pious actions of Solon. The parallels between Solon's and his intervention show clearly Aeschines' intention to magnify and justify his

¹⁴⁷ Cf. Schol. Aeschin. 2. 67a, 68; both myths deal with connections the Athenians had with Amphipolis, on which their claim over it was based.

¹⁴⁸ This does not contradict the results of Ch. 6: Aeschines only repeats what he had said to Philip; he does not use the same points as arguments before the *δῆμος*. On diplomatic missions, it might have been more common to use arguments on the basis of myths, cf. Xen. *Hell.* 6. 3. 6, 5. 47, Diod. Sic. 16. 23. 5, Veyne (1988), 80 1, also Perlman (1961), 159 61. Thuc. 1. 73. 2 might also be an indication of this practice.

actions: the piety of Solon's action is underlined by the density of ritual acts mentioned in the narrative.¹⁴⁹

Apart from the passage above and the one in which he ridicules the 'fine-sounding arguments together with myths' (Dem. 18. 149) Aeschines had told the amphictyons, Demosthenes does not explicitly refer to the religious bias in Aeschines' speeches. However, the main characteristic of Aeschines' style according to him is *σεμνότης*,¹⁵⁰ a term which, when applied by Demosthenes to Aeschines, will suggest 'pomposity, false solemnity' rather than justified solemnity. This shows that even among his contemporaries Aeschines' style was perceived as a means of enhancing his own dignity. After the speech to the assembly in which he reported what he had told Philip, he left the stage 'in a very solemn manner' (Dem. 19. 23). We may assume that his treatment of religious matters contributed to the *σεμνότης* of what he said.¹⁵¹ The actions of the amphictyons, especially in Solon's time, could be seen as dignified in themselves. Aeschines' expertise and participation in these dealings were subjects suitable for him to exalt himself by.

Again the question is whether Aeschines exploited religion in this way because the audience would have known him as the offspring of a family with a religious tradition. The alternative is that he deliberately gave himself religious airs in order to create an image of himself when at the start of his career he was unknown to the audience. In fact he never gives any information on what his mother actually did; when he says that 'my uncle Cleobulus... served with Demaenetus of the Buzygae when he defeated the Spartan admiral Chilon at sea', he seems to suggest that his uncle was a military commander rather than a seer. This hints at the latter option.¹⁵²

Montgomery has summarized and characterized Aeschines' religious argumentation well, saying: 'Aeschines tries to depict himself as a man for whom religion was a serious matter.'¹⁵³ He makes extensive use of references to religion to influence the dikasts, to characterize himself and his opponent, but also to instil fear. While Demosthenes can answer even religious allegations on a non-religious

¹⁴⁹ 3. 108 9, 119 20. One other instance of the use of religious language or acts in Aeschines' assembly speeches is reported by Demosthenes: during the war, Aeschines swore that he was not working for Philip and cursed himself if he did so (Dem. 18. 283). However, Demosthenes' words *καταρᾶσθαι* and *διόμνυσθαι* do not necessarily indicate a very solemn procedure, but can simply be a strong asseveration of Aeschines' innocence, e.g. with the form *ἀπολοίμην*. This seems to have been a trite formula, particularly frequent in comedy (Dem. 19. 172, Ar. *Ach.* 476, *Ran.* 579, Men. *Epit.* 1063; though cf. in an actual curse formula Dem. 54. 41), but could be described in the terms of Demosthenes, who is of course interested in exaggerating Aeschines' assurances.

¹⁵⁰ For references cf. Kindstrand (1982), 21 2.

¹⁵¹ Cf. Hermog. *Id.* 1. 6 (*Rhet.* ii. 287 Spengel) *ἐννοιαί τοίνυν εἰσὶ σεμναὶ μάλιστα μὲν αἱ περὶ θεῶν ὡς περὶ θεῶν λεγόμεναι*.

¹⁵² Aeschin. 2. 78, cf. Harris (1995), 27 8.

¹⁵³ (1996), 129.

level and restricts the strongest instances of religious arguments to defensive sections, Aeschines resorts to piety and the like whenever possible. However, his method can be described more specifically. Aeschines uses the pollution motif and instances of impiety in a negative way to denigrate his opponents. As has been shown, religious defilement and moral or social stain are often combined. The use of these types of argument is not restricted to the speech *Against Timarchus*, in which it is closest to hand. In that speech personal conduct is at the centre of the charge, while concrete policies are ignored although (or because) the trial was itself a political manoeuvre. Pollution is contracted by private, physical acts, not by sacrilege. The argument works by describing Timarchus as an abominable, morally depraved person, and one not fit for a political or religious office owing to his lack of purity. At least this last aspect has a close connection to the issue at stake, the qualification of an orator-politician, and it is related to the action of which Timarchus is accused. However, the political tendency of his activity as an orator is not even mentioned. In the speech *Against Ctesiphon*, Demosthenes is said to be involved in the murder of a person dangerous to his career and to have accepted 'polluted' money. Both offences are more or less closely related to politics. Yet, while the bribes from the Amphissians have an impact on the course of events and Demosthenes' policy, the murder of Nicodemus is not part of the actual subject-matter of the trial.¹⁵⁴ It is used as an additional point of accusation. However, in all three speeches, pollution is marked as dangerous to the state or even (in 330) as the reason for Athens' disaster.

In the openly political speeches these attacks are balanced by Aeschines' extensive positive self-presentation.¹⁵⁵ The display of his own righteousness and expertise in religious matters allows him to attack his opponent. The contrast to his rival's impiety makes the latter seem even more scandalous: for, if the jurors have the choice of approving the policy of either a sinner or a saint, the decision is easy for them. The strategy of justifying his dealings by reference to religious correctness also enables him to pass over political consequences or implications.

One might assume that the display of piety also serves as proof of the justness of his position at the trial: such a decent and righteous man would never tell lies. However, there is no positive evidence for this strategy. Nevertheless, since piety is part of the ethos Aeschines assumes, it is probably a means by which to win over the audience for his cause. It is an element of the image of dignity he tries to convey to them. The solemnity of the affairs in which he participates and their

¹⁵⁴ Being a plea in defence, the *Paraprosbeia* speech would not have to deal with Demosthenes at all. Nevertheless, Aeschines launches a counterattack, accusing Demosthenes of bribery in turn. So everything concerning Demosthenes' policy could be regarded as part of the central subject-matter. The murder of Nicodemus is, however, referred to in a passage of private vilification.

¹⁵⁵ In *Against Timarchus*, Aeschines does not use this tactic, even though the claim of moral and social superiority is the same as in the other speeches. Perhaps this is due to the lack of political content in the speech.

environment enable him to describe his own action more impressively. So again religion is used in building up a claim of authority.

Aeschines' emphasis on his own importance in the decisions at Delphi underpins his argumentation with pollution and impiety, but may also conceal his dubious social origin. It could be for both reasons that Demosthenes attacks him so viciously by targeting his mother's priesthood. It has been shown earlier how Demosthenes ridicules Aeschines' childhood in relative poverty in this way. Having seen the way in which Aeschines uses religion in his speeches, one might suppose that another reason for Demosthenes to introduce these is to undermine Aeschines' credibility based on his religious authority. Again, as with his prayers in *On the Crown*, his use of religious matters seems to be merely defensive. It may be worth noting that Demosthenes does not simply indulge in counterattacks by accusing Aeschines of impiety. Instead, he attacks the source from which his opponent's accusations gain their strength. It is, however, hard to say whether he does so because this form of religious accusation is particular to Aeschines or because Aeschines is actually very weak in this point and his authority is just faked.

EXCURSUS: *AGAINST ARISTOGITON I (OR. 25)*

At this point, it is impossible to duck out of a statement on one of the most puzzling products of Attic oratory, the first of the two speeches *Against Aristogiton* which we find in the *Corpus Demosthenicum* (orr. 25 and 26). It presents itself as supporting speech in an ἐνδειξις trial in which the main prosecutor was Lysurgus. The charge was that Aristogiton exercised citizen rights while he was barred from them because of debts to the treasury: he addressed the assembly and appeared in court as prosecutor.

The authenticity of the speech has often been doubted, and even among those who accept Demosthenic authorship its function is controversial. If we could exclude the possibility that Demosthenes delivered the speech, there would still be several other possibilities for the nature of the text: a forgery from a later period; a composition of a contemporary of Demosthenes; Demosthenes' own work but not meant for actual delivery; or a logographic speech for delivery by someone else.¹⁵⁶

The speech purports to be intended for real use, and formally nothing prevents it from being so.¹⁵⁷ The speaker reveals about himself that he is a politician who

¹⁵⁶ Exemplary opinions: a later fabrication, Sealey (1993), 237–9; a contemporary writer, Treves (1936), 252–8; an exercise by Demosthenes, Blass (1887); a logographic speech, Rubinstein (2000), 30 n. 15 (stating it as a possibility). Carmignato (1999), among others, believes the speech was written for delivery by Demosthenes.

¹⁵⁷ Unlike e.g. Isocrates' *Antidosis*, in which the illusion is breached by the introduction (§§1–13) on the fictitious character of the speech itself.

was active against Philip and sued nine times by Aristogiton for this reason (§§37–8); in preparation for the trial he was elected joint prosecutor by the assembly. From other sources we can infer that the trial took place not long before Aristogiton was again sued for his involvement in the Harpalus affair in 323.¹⁵⁸ Photius in the ninth century knows a speech by Aristogiton entitled *Defence against the Indictment of Lycurgus and Demosthenes*. However, since we know nothing about the speech, we cannot be sure that it is authentic; the title is probably not.¹⁵⁹

The speech is known to Satyrus, the biographer of Euripides, who cannot be securely dated but probably worked no later than the first half of the second century BC.¹⁶⁰ The biographer cites a passage to demonstrate (probably) how much the style of performance of the author resembles (?) that of Euripides. It is clear from the context that Satyrus is talking about a prominent orator, and nowhere in the ancient tradition is anyone other than Demosthenes associated with this speech.¹⁶¹

So far everything points to the authenticity of the speech. Doubts were first raised by Dionysius of Halicarnassus, who found ‘disagreeable, vulgar, and crude passages’ in it, which he declares typical of the spurious parts of the *Corpus Demosthenicum*.¹⁶² However, this view is not representative of the ancient authorities: Hermogenes regards the speech as the prime example of vehemence (*σφοδρότης*); for Pliny it demonstrates the licence to ‘give the horse the bridle’, which distinguishes oratory from poetry.¹⁶³ In modern times a majority of scholars have followed Dionysius. The arguments adduced to substantiate spuriousness can be divided into two groups: the ‘hard’, objective ones admission of which absolutely excludes Demosthenic authorship, and the ‘soft’, subjective

¹⁵⁸ It is mentioned in Dinarchus’ speech for the latter trial as the last, and perhaps most recent, element in a list of outrageous actions committed by Aristogiton (Din. 2. 13, where it is the last item in a list, introduced by the words τὸ τελευταῖον). Lycurgus died in 324, some time before the Harpalus affair. This is the *terminus ante quem* of the trial.

¹⁵⁹ Libanius (*Arg.* 24. 6) reports that the indictment was made by οἱ περὶ Λυκούργου, which one might be disinclined to interpret as Lycurgus and Demosthenes and is unlikely to mean more than Lycurgus alone (cf. LSJ s.v. *περί* C.I. 2), just as Dinarchus speaks only of Lycurgus (2. 13).

¹⁶⁰ Most scholars date him to the second half of the 3rd c., but cf. the cautious discussion in Schorn (2004), 6–10. Satyrus is counted among the scholars of the Alexandrian Museum, so the speech was probably attributed to Demosthenes by Callimachus (at the latest).

¹⁶¹ P.Oxy. IX 1176 fr. 39 col. viii. The text is lacunose. We have neither the verb nor the name of the person compared with Euripides. There is, however, no reason to doubt the restoration of ὑπόκρισιν as *tertium comparationis*. This fits well to the stories about Demosthenes taking lessons with the actor Satyrus and his statement that delivery (ὑπόκρισις) was the first, second, and third most important element in oratory (Plut. *Dem.* 7. 1–5, *Mor.* 845 B).

¹⁶² Dion. Hal. *Dem.* 57. The transmitted text ἐν τῇ κατ’ Ἀριστογείτονος β’ makes no sense. I accept Blass’s emendation ἐν τοῖς. Libanius (*Arg.* 24. 11) states clearly that Dionysius disputes Demosthenic authorship of both speeches.

¹⁶³ Hermog. *Id.* 1. 8 (*Rhet.* ii. 302 Spengel), Plin. *ep.* 9. 26. 7–9; cf. also Plut. *Dem.* 15. 3, Phot. cod. 265. 491^a and the unnamed defenders of authenticity mentioned by Libanius (cf. n. 162).

ones. The first group consists of factual mistakes, anachronisms, and quantifiable stylistic criteria.

In 1883 Justus Lipsius listed thirteen instances of legal and constitutional details in the speech that seemed to him to contradict what we know from other sources. The first response came from Weil, who partly denied that the details are irreconcilable with known details of the Athenian legal system and partly offered new explanations or emendations: his arguments were later refined by Richard Schläpke and Mogens Hansen.¹⁶⁴ If we accept their explanations and (slight) changes to the text, we only have to allow for minor inaccuracies deriving from rhetorical exaggeration. In some of the instances Lipsius may be able to criticize the text only because we are badly informed about the details of Athenian legislation. The divergences from what we know are, however, minute and may be owed to exceptional circumstances. They are not sufficient to guarantee late composition.¹⁶⁵

The second kind of false facts concerns the circumstances of the trial: in two contributions Sealey has pointed out that some facts in the speech are at odds with other sources. He admits that 'auxiliary hypotheses are possible',¹⁶⁶ but prefers regarding the speech as a forgery. Again the rhetoric of the speech and insufficient knowledge about the historical background on our part leave considerable room to uncertainty; the contradictions are not so blatant as to exclude composition at the time of the trial. Therefore, even if the passages in question are awkward, the possibility of auxiliary hypotheses forbid dismissing the speech.¹⁶⁷ So the author cannot be securely shown to display either more knowledge than he could or less than he should have had. There may still be enough features to justify suspicions about the speech being composed in the period in which it purports to belong. However, discarding it would be too easy a way out: we have to contemplate that the text was indeed written by a contemporary of, if not a participant at, the trial.

Another approach tackles the text regardless of its content. Two stylometric particularities of Demosthenes have been discovered by which spurious texts can be identified: the handling of hiatus and the tribach. The advantage of these criteria over other stylistic approaches is that they are exact; the presence of hiatus

¹⁶⁴ Lipsius (1883), Weil (1887), Schläpke (1913), 10–30, Hansen (1976), 146–50.

¹⁶⁵ Sealey (1993), 238–9 insists that the problems in §§13, 42, and 65 have not been solved and that the speech should be regarded as spurious. However, even so the quantity of false information would be exceptionally low for a later forgery, and the author had exceptionally good sources.

¹⁶⁶ (1993), 238. I shall not dwell on Sealey's suggestion (239) to split the speech in two parts (§§1–53, 54–101). Some peculiarities in the religious argumentation and other aspects are to be found only in the first part, but others are spread evenly throughout the speech and the style is uniform. It is, moreover, far from inconceivable that a speech should fall into two parts, dealing with one issue (the dangers of the dikasts showing mercy) from two different angles (the lawful order and the undeserving defendant).

¹⁶⁷ Anachronisms were also sought in the philosophical views concerning the relation between law and nature. However, assignment of thoughts to Platonic or Stoic origin has in the meantime been rejected, cf. Guthrie (1962–81), iii. 75 n. 2 against Gigante (1956), 268–92.

cannot be disputed in the way other 'non-Demosthenic' stylistic features can. In turn, the avoidance of hiatus alone is, of course, not sufficient to prove Demosthenic authorship, but the lack thereof can be used as a relatively safe criterion to rule out the speech's authenticity. Blass's tribrach rule (that is avoidance of three or more short syllables in a row), by contrast, is to our knowledge followed only by Demosthenes to a considerable degree.¹⁶⁸ Examination of the speech yields that hiatus is not avoided quite as rigidly as in the other speeches, but composition is not careless in a way that would exclude Demosthenic authorship.¹⁶⁹ As regards avoidance of the tribrach, not only is there no reason to rule out that Demosthenes wrote the speech, but it may even make his authorship more likely: according to some counts the tribrach occurs with a frequency comparable to that of the speeches 18–24.¹⁷⁰

So all attempts to prove spuriousness by any safe criteria have failed. Each of the criteria may leave us with some unease about some passages, but none of them is strong enough to exclude Demosthenes as the author. If the writer was not an ingenuous fraud, he was a contemporary of the trial with knowledge of the Athenian legal system well surpassing ours. His knowledge of the trial is independent of Lysurgus' speech (the obvious source of information for Libanius and any later writer), as he gives details apparently not mentioned in the first speech. Finally, he copies some stylistic features of Demosthenes, of which the tribrach rule seems to have been unknown even to (or is at least never mentioned by) the ancient theoreticians.

A second strategy to substantiate spuriousness resorts to less exact criteria, all regarding style. The ground on which we stand here is slippery. *Ex cathedra* verdicts like Blass's that 'the Demosthenic character, in other respects and especially as regards composition, is unmistakeable',¹⁷¹ would hardly be tolerated nowadays. However, some features are undoubtedly odd. The text contains grammatical constructions Demosthenes normally avoids in favour of different ones.¹⁷² The list of words and phrases unparalleled in Demosthenes (and the

¹⁶⁸ Vogel (1923); only the *Epitaphios* of the speeches may be spurious despite observing the law.

¹⁶⁹ Cf. Benseler (1841), 127–9, who points to a number of objectionable instances of hiatus.

¹⁷⁰ McCabe (1981), 126–8 using computer statistics arrives at a frequency that is slightly higher than that in the speeches 18–22 but much lower than that in the spurious ones and even lower than that in *Against Androtion* and *Against Timocrates*. He does not seem to take into account all the exceptions stated by Blass (e.g. that three short syllables in the same word are allowed), but his system proves reliable for the other speeches by Demosthenes. Vogel (1923), 94 gives a hand count (with all rules applied) of tribrachs per 100 lines. The result amounts to the same; according to this calculation the tribrach is even rarer than in most authentic speeches.

¹⁷¹ Blass (1887 98), iii/1. 411 'der Demosthenische Charakter [ist] sowohl im übrigen als namentlich in der Composition ganz unverkennbar'; an explanation is given in Blass (1887), esp. 130–3 (on prose rhythm).

¹⁷² Cf. Schläpke (1913), 62–70; for example, the common word ἀποψηφίζομαι is always used with the genitive in the other unobjectionable speeches of Demosthenes (Dem. 18. 250, 19. 212, 219, 21. 204, 22. 45, 23. 92, 41. 19, 57. 58, 59, 62; the exception is Dem. 45. 51, a speech that has been suspected also on other grounds). In Dem. 25. 83 it is suddenly used with the accusative.

orators) is long, but it is unclear from what point it is necessary to take this as a strong indication of spuriousness – in particular since the character of the speech is so different from others and many unique details will require unparalleled vocabulary. So it is not suitable to serve as proof in itself,¹⁷³ even though it includes such a remarkable example as *αἰδώς* (§§32, 35; on the important role of the word in this speech cf. below). The high concentration of unusual metaphorical expressions and the mixture of details and vagueness seem uncharacteristic.¹⁷⁴

On a different level, the speech lacks some of the finest features of Demosthenic style: while Lionel Pearson lays greatest emphasis on what he calls the ‘art of Demosthenes’ in the author’s narratives, *Against Aristogiton I* contains nothing of that kind. Not that it does not report things that happened, such as Aristogiton biting off the nose of his fellow prisoner and his subsequent exclusion from the community of the inmates, or the background of the *γραφὴ παρανόμων*, in which Demosthenes himself acted as prosecutor against Aristogiton;¹⁷⁵ but nowhere does Demosthenes use such an episode for a lively description of the scene. Instead of letting such a lively narrative speak for itself, he is content with baldly stating what happened and expressing his disgust at Aristogiton’s actions. The fact that the speech is a *δευτερολογία* cannot account for that difference: even *Against Androtion*, a shorter (and also a supporting) speech, contains such a scene, describing how people hid from Androtion as tax collector.

On the other hand, the speech has often been criticized for prolixity and the lack of relevance. The only passage that concerns the *ἐνδείξεις* proper fills no more than a few paragraphs (§§69–75); the rest dwells on general arguments such as the importance of the law as opposed to nature (§§15–35), Aristogiton’s previous life and alleged role as ‘watchdog of the people’ (§§36–68) and the warning not to show mercy to the defendant (§§76–97). The lack of direct relevance

¹⁷³ e.g. §§33 *εἰς ὅσον δύνατον*, 47 *ἄνω τε καὶ κάτω*, normally *ἄνω καὶ κάτω οἱ ἄνω κάτω*. For lists of words and phrases cf. Braun (1873), 4–10, Schläfke (1913), 58–70, Kramer (1930), 40–4, and below, p. 137.

¹⁷⁴ As to vagueness, no details are presented regarding the trials mentioned to show that Aristogiton is a sycophant (§§37–8); we do not hear anything more particular (e.g. as to the targets) about Aristogiton’s improper slander in the assembly; many of the maxims and theoretical considerations can also be counted here, as their connection with the case is rather loose; an example of strange details is the elaborate description of the procedures by which the deliberating bodies of the city are kept free from disturbances (§23). In the reference to the trial of Agathon (§47) both vagueness and detail are combined. Unusual comparisons and metaphors are, for example, Aristogiton walking in the Agora like a ‘snake or scorpion’ (§52, the latter is extended in a way that makes the first look unsuitable; the snake is used again in §96 together with a tarantula), the ‘grocer of wickedness’ (§46), the ‘pest’ (§80), the ‘farmer of evils’ (§82) – all these are far from the sarcastic neologisms Kramer (1930), 50–1 adduces as parallels from *On the Crown*. The number of references to trades is conspicuous (in addition to the examples just listed e.g. the comparisons with a cook’s blunt knife §46 and a doctor §95).

¹⁷⁵ §§61–2, 87 (with Lib. *Arg.* 24. 3); it is in itself strange enough that Demosthenes (supposing that he is speaking) does not mention his own role (and victory) in that affair, cf. Pearson (1976), p. vii.

of the speech is excused by the repeated remark that Lycurgus has anticipated most of it and not left much to the speaker to say (§§1, 54, 69). *Against Androtion*, again, starts with a similar statement, but it nevertheless contains relevant topics: in the first part it anticipates Androtion's arguments in his defence and in the second it narrates Androtion's previous career. Both these topics are typical constituents also of principal speeches. By contrast, the special contribution of *Against Aristogiton I* is obscure: as a mere *augmentatio* without real substance it seems feeble; the warning against mercy is protracted and loosely composed;¹⁷⁶ the general remarks on the importance of the laws and lawful order are vague and add a philosophical touch far exceeding the average: most of the time the specific case is not addressed. Instead, the passage is made up by general considerations about the law (§§15–16 'Men of Athens, the whole life of men, whether they dwell in a large state or a small one, is governed by nature and by the laws. Of these . . . the laws are something universal, definite, and the same for all. . . . The laws desire what is just and honourable and salutary; they seek for it, and when they find it, they set it forth as a general commandment, equal and identical for all. Such is the law.') and examples of such order at Athens and its benefits (§24 'All the noble and reverend qualities that preserve our city sobriety (σωφροσύνη), the respect of our younger men for parents and elders, orderliness hold their own, backed by the laws, against the base qualities of indecency, audacity, and shamelessness'). Not even in the *γραφὰι παρανόμων* do we find anything similar, although these seem far more suitable contexts for such reasoning.

As to the religious argumentation, it diverges to a remarkable extent, not only from Demosthenes' undisputed speeches, but from all others. To begin with, religious terms are prominent among the abuse against Aristogiton. Both religious and general slander is strong as nowhere else. The term 'beast' (θηρίον) is not used as direct abuse in any of Demosthenes' certainly authentic speeches.¹⁷⁷ In this speech it is part of the denigration that portrays Aristogiton as the most evil (πονηρός) of all, even among prisoners (e.g. §§5, 63, 68). Other negative evaluations occur constantly: as to religious terms, Aristogiton is characterized as *μιαρός* with unprecedented frequency. Thus, for example, when Demosthenes¹⁷⁸ describes how prone he is to neglecting and subverting the laws (§§27–8):

¹⁷⁶ Cf. Blass (1887), 137. It would be surprising and oddly differing from similar cases if the coordination between the prosecutors had been so bad that Lycurgus unexpectedly left nothing to talk about to his colleagues.

¹⁷⁷ The only possible Demosthenic instance is in the middle section of *Against Timocrates* (Dem. 24. 143), which is for other reasons suspected of being not purely Demosthenic. In spurious speeches: Dem. 34. 52, 35. 8, 43. 83, 58. 49. In Dem. 18. 322 it is used in a comparison.

¹⁷⁸ To avoid the awkwardness of writing 'the speaker' whenever I refer to the author of this speech, I have chosen this form, especially since Demosthenic authorship is more likely than not. It is not meant to negate the reservations made above.

καὶ οὐδεὶς ὑμῶν χολὴν οὐδ' ὀργὴν ἔχων φανήσεται ἐφ' οἷς ὁ βδελυρὸς καὶ ἀναιδὴς ἄνθρωπος βιάζεται τοὺς νόμους ὅς, ὦ μιαρῶτατε πάντων τῶν ὄντων ἀνθρώπων, κεκλειμένης σου τῆς ἐξουσίας οὐ κυγκλίσιν οὐδὲ θύραις, ἀ καὶ παρανοίξειεν ἄν τις, ἀλλὰ τοσοῦτοις καὶ τηλικούτοις ὀφλήμασιν, καὶ τούτων παρὰ τῇ θεῷ κειμένων, εἰς τὸ ἐντὸς τούτων βιάζῃ καὶ προσέρχῃ πρὸς ταῦτ' ἀφ' ὧν ἀπελαύνουσιν σε οἱ νόμοι;

Will no one of you show anger or bitterness at this loathsome, shameless person's defiance of the laws? At yours, most defiled of all living men, barred from that right, not by barriers or doors which any man might break open, but by so many heavy penalties registered in the temple of the goddess, you who are trying to force your way in to them and to approach the places from which the laws drive you away?

The word *μιαρὸς* is here used as one item in a series of abusive terms. It is not quite clear to what extent it is meant to have a specifically religious connotation evoked by the memory of Aristogiton's deeds: so far, Demosthenes has not spoken of any concrete acts by which people usually offend the gods. That he offends Athena by speaking despite being in debt to the state (because the treasury is situated in her temple) seems a rather complicated line of thought. The laws, however, have already been described as of divine origin and divinely sanctioned (cf. below), and Lysurgus had already stated his case, producing evidence of Aristogiton's maltreatment of his parents. So it is appropriate that his contravention of the law be accompanied by a religious term. The frequency of *μιαρὸς* increases when Demosthenes reminds the dikasts of Aristogiton's conduct towards his family (§§54–5):

πρὸς μὲν γὰρ τῷ τὸν πατέρα ἐν τῷ δεσμωτηρίῳ προδοὺς ἀπελθεῖν ἐξ Ἐρετρίας, ὥσπερ ἠκούσατε Φαίδρου, ἀποθανόντα ὁ ἀσεβὴς οὗτος καὶ μιαρὸς οὐκ ἔθαψεν, οὐδὲ τοῖς θάψαισι τὴν ταφὴν ἀπέδωκεν, ἀλλὰ καὶ δίκην πρὸς ἔλαχεν. πρὸς δὲ τῷ τῆς μητρὸς μὴ ἀπεσχῆσθαι τῷ χεῖρι, ὥσπερ ἀρτίως ἠκούσατε τῶν μαρτύρων, καὶ τὴν ἀδελφὴν τὴν ἑαυτοῦ, οὐχ ὁμοπατριάν μὲν οὖσαν, θυγατέρα δ' ἐκείνης ὁπωσδήποτε γενομένην (ἐὼ γὰρ τοῦτο), ἀλλ' ἀδελφὴν γε, ἐπ' ἐξαγωγῇ ἀπέδοτο, ὥς φησι τὸ ἐγκλημα τῆς δίκης, ἣν ὑπερ τούτων ἔλαχεν αὐτῷ ὁ χρηστὸς ἀδελφὸς οὗτοςί, ὁ νῦν συναπολογησόμενος.

Not content with abandoning his father in prison when he quitted Eretria, as you have heard from Phaedrus, this unnatural ruffian refused to bury him when he died, and would not refund the expenses to those who did bury him, but actually brought a lawsuit against them. Not content with offering violence to his mother, as you have just heard from the witnesses, he actually sold his sister – not indeed a sister by the same father, but his mother's daughter, whatever her parentage (for I pass that by) – still he sold his sister for export, as is stated in the indictment of the action which was brought against him on these grounds by his good brother here, who in the present action will help to defend him.

The shameful treatment of his family, especially in connection with the burial of his father, is clear impiety by all standards and even a source of defilement.¹⁷⁹ When Demosthenes calls the man who was sued by Aristogiton because he buried his (Aristogiton's) father as witness, he speaks of Aristogiton as of a

¹⁷⁹ Cf. Schol. Soph. *Ant.* 255; Parker (1983), 44.

‘polluted (*μιαρός*) beast with whom one must not have intercourse (*ἄμεικτος*)’ (§58), and Aristogiton is called *μιαρός* again in connection with the story of how he bit off and swallowed the nose of a fellow prisoner (§62). The invective crescendo ends in a staccato of terms that describe all aspects of Aristogiton’s turpitude (§63):

εἴτ’ οὐκ αἰσχύνεσθε, ὦ ἄνδρες Ἀθηναῖοι, εἰ οἱ μὲν ἐπὶ πονηρίᾳ καὶ τοῖς ἐσχάτοις ἐμπεπτωκότες εἰς τὸ οἶκημα τοσοῦτω τούτον ἡγήσαντο ἑαυτῶν εἶναι πονηρότερον ὥστ’ ἄμεικτον ἑαυτοῖς καταστήσαι, ὑμεῖς δ’ ἐξεληλακότων τῶν νόμων αὐτὸν ἐκ τῆς πολιτείας εἰς ὑμᾶς αὐτοὺς καταμείξετε; τί τῶν πεπραγμένων ἢ βεβιωμένων ἐπαινέσαντες; ἢ τί τῶν πάντων οὐχὶ δυσχεράναντες; οὐκ ἄσεβής; οὐκ ὤμός; οὐκ ἀκάθαρτος; οὐ συκοφάντης;

Are you not ashamed, men of Athens, if the men who had been thrown into prison for villainy and vice thought him so much more villainous than themselves that they forbade all intercourse with him, while you are ready to admit him to intercourse with yourselves, though the laws have placed him outside the pale of the constitution? What did you find to commend in his life or conduct? Which of all his actions has failed to move your indignation? Is he not impious? Not bloodthirsty? Not unclean? Not a sycophant?

The passage combines political, moral, and religious vituperation. The word *ἄσεβής* represents the latter; in addition, *ἀκάθαρτος* replaces *μιαρός* and sums up all that is despicable about Aristogiton. After the passage on the *ἐνδειξις* the invective restarts when Demosthenes tries to keep the *dikasts* from showing pity to Aristogiton. The terms are partly new. There is one more instance of Aristogiton’s being called *μιαρός* at the start of this new invective (§81), but the slander is then extended to more than single expressions. Aristogiton is ‘thrice cursed’ (*τρισκατάρατος*, the only instance of that word in Attic oratory), a man ‘against whom one prays that the earth may neither yield him fruit nor receive him after death’ (§82). His bloodthirstiness (*μιαιφονία*, this is the only occurrence in the orators; the related verb occurs in the *Parapresbeia* speech, §260, but applied to unnamed people) can be recognized from the fact that he does not pity the men he prosecutes even when their children and aged mothers ask for pardon (§84). Finally, Demosthenes states that misfortune brings even the wickedest people to reason, but not so Aristogiton (§§93–4):

τοὺς δὲ πονηροτάτους καὶ ἐξαγίστους ὀνομαζομένους τὰς γε συμφορὰς σωφρονίζειν λέγουσιν. οὗτοσὶ τοίνυν Ἀριστογείτων τοσοῦτον ὑπερῆρκεν ἅπαντας ἀνθρώπους πονηρίᾳ ὥστ’ οὐδὲ παθῶν ἐνουθετήθη, ἀλλ’ ἐπὶ τοῖς αὐτοῖς ἀδικήμασι καὶ πλεονεκτήμασι πάλιν εἴληπται.

The utterly wicked, the so called accursed, are said certainly to be taught wisdom by suffering. Now Aristogiton here has so far outstripped all men in wickedness that his punishments have not disciplined him and he is once more detected in the same illegal and rapacious acts.

ἐξάγιστος has occurred in connection with the 'accursed harbour' of Amphissa in Aeschines' accusations against Demosthenes. Aeschines uses it repeatedly like a technical term and with relation to an actual curse.¹⁸⁰ In *Against Aristogiton I* nothing like that is recognizable; although Demosthenes suggests with 'so-called' that there is a specific meaning to it, the word is used without a specific context that would explain why Aristogiton has deserved such a harsh denunciation. Thus it is a good example of how Demosthenes vilifies his opponent with an unparalleled harshness, without, however, making clear on what basis he does so. The slander seems excessive, even for claims of impiety against family members.¹⁸¹ Instead, the actual offences look harmless compared to what has been brought forward in other speeches: Demosthenes' involvement in the murder of Aristarchus, his responsibility for the death of Athenians, and the loss of Athens' independence at Chaeroneia, and Timarchus' speaking in public after prostituting himself and squandering his patrimony. What the denigration lacks, what seems typically Demosthenic, is sarcasm against, and mockery of, the opponent. We do not note a pinch of irony anywhere, such as the depiction of Midias as a changeling whose real mother was so clever as to give him away as early as possible (Dem. 21. 149); about the mysteries of Aeschines and his mother enough has already been said. Aristogiton is only attacked in the fiercest and bluntest ways – without any divertissement or wit to delight the listener. Apart from the emphasis on religious abuse this is one of the most baffling elements in the invective of this speech, one that makes the modern reader inclined to deny it to Demosthenes. The speaker does not seem to be in a contest with the opponent, but to assail him relentlessly. Aristogiton does not seem to be a player in the same league as Demosthenes and his 'worthy' contenders. Rather, he is so vile, so base, that it is not necessary even to show him the respect of a finely composed, subtle prosecution speech. Right from the first paragraph, Demosthenes announces that the correct judgement is clear; it does not depend on the dikasts' being convinced that it is right to condemn Aristogiton, but on their being willing to carry out the proper course. He does not need to prove anything, but only to warn them not to shy away from the consequences.

The religious argumentation is, however, singular in yet another respect. Independent of the abuse in religious terms, there is another way in which religion is applied idiosyncratically, one that looks at poetic forms. Towards the end of the proem, Demosthenes holds out the prospect that the dikasts can still put things right and re-establish order and morals in the city. To this end they have to give the right judgment, which is subsequently paraphrased in the following way (§11):

¹⁸⁰ The other instances of the word in classical texts (Soph. *OC* 1526, Eur. *TrGF* 953 m. 31) are also linked – as far as we can see – with clearly religious matters. They are not used against any people.

¹⁸¹ Cf. the indignation about Aristogiton's maltreatment of his father in Din. 2, cf. n. 91.

δεῖ δικάσαι τὴν τὰ δίκαι' ἀγαπῶσαν Εὐνομίαν περὶ πλείστον ποιησαμένους, ἢ πάσας καὶ πόλεις καὶ χώρας σώξει καὶ τὴν ἀπαραίτητον καὶ σεμνὴν Δίκην, ἣν ὁ τὰς ἀγνωτάτας ἡμῖν τελετάς καταδείξας Ὀρφεὺς παρὰ τὸν τοῦ Διὸς θρόνον φησὶ καθημένην πάντα τὰ τῶν ἀνθρώπων ἐφορᾶν, εἰς αὐτὸν ἔκαστον νομίσαντα βλέπειν οὕτω ψηφίζεσθαι, φυλαττόμενον καὶ προορώμενον μὴ κατασχῆναι ταύτην, ἥς ἐπώνυμός ἐστιν ὕμων ἕκαστος ὁ αἰὲ δικάζειν λαχὼν, πάντα τὰ ἐν τῇ πόλει καλὰ καὶ δίκαια καὶ συμφέροντα φυλάττειν ταύτην τὴν ἡμέραν παρακαταθήκην ἔνορκον εἰληφὼς παρὰ τῶν νόμων καὶ τῆς πολιτείας καὶ τῆς πατρίδος.

You must judge considering most of all Eunomia, who loves what is right and preserves every city and every land; and before you cast your votes, each juryman must reflect that he is being watched by hallowed and inexorable Justice, who, as Orpheus, who has taught us the most sacred mysteries, tells us, sits beside the throne of Zeus and oversees all the works of men. Each must keep watch and ward lest he shame that goddess, from whom everyone that is chosen by lot to judge derives his name, because he has this day received everything that is good, just and expedient as a trust secured by oath from the laws, from the constitution, from the fatherland.

Eunomia denotes obeisance to the laws and a condition in which it is made.¹⁸² In Athens it had been used most famously by Solon in the elegy transmitted in Demosthenes' *Paraprosbeia* speech (fr. 4). Much rarer is the citation of the concept in the form of a personification, as a goddess related to Zeus as both daughter and consort.¹⁸³ Dike is mentioned as her sister both in Hesiod and in the Orphic Hymns. The speaker does not just have recourse to divine genealogy in what seems more concrete than a merely allegorical form, but points to the Orphic origin of the concepts. This aspect of Athenian religion is otherwise not very prominent and tolerable probably only because Orpheus began to be associated with the Eleusinian Mysteries.¹⁸⁴

The first idea that is expressed in this passage is the duty of the dikasts to upkeep or reinstate the lawful order. This key message is appropriate both for the proem, in which the importance of a conviction is emphasized, and for the subsequent passage on the priority of law in human society. What is unusual in this context is the personification, the naming of the goddess Eunomia (and her occupation, saving cities and lands) instead of the concept or principle of 'good and lawful order'. For single personifications, it is true, we had precedents in Aeschines. However, in Aeschines the nature, that is the allegorical content, of the deities is much more dominant: Peitho/Persuasion is contrasted with sycophancy and the divinity of PHEME/Rumour guarantees the veracity of her messages. These goddesses are neither depicted in their heavenly environment

¹⁸² M. L. West (1966), 407, to be supplemented on a non-political level by Soph. *Aj.* 713.

¹⁸³ *PMG* adesp. 100b, Pind. *Ol.* 13. 6–8, Bacch. 1. 54–5; with mention of the family relation: Hes. *Theog.* 902, Orph. *Hym.* 43. 2, 60. 2; Dike sitting by Zeus' side: Hes. *Op.* 259, Aesch. *TrGF* 281a. 10, Orph. *Hym.* 62. 1, cf. M. L. West (1978), 221.

¹⁸⁴ The passage is one of the earliest testimonies to the belief that Orpheus 'taught', i.e. instituted, the Eleusinian Mysteries, cf. Graf (1974), 22–39.

nor described in their activity. Moreover, the personifications in this speech do not just enjoy cultic worship in Attica; they are all connected with the family of Zeus and appear in genealogies of the gods.

The second argumentative motif is one that we have seen in Lysurgus and *Against Andocides* and even in Demosthenes:¹⁸⁵ that the gods can see what vote individual dikasts cast, whether they acquit or condemn the defendant. The main difference from all the other such passages results from a change of perspective. Elsewhere the focus was on the dikasts and their awareness of the gods' knowledge. The gods themselves remain in the background (or far remote in an unnamed heavenly place). In this case, by contrast, we are presented with something like a vignette, with Zeus sitting on his throne and Dike by his side. The dikasts are requested to imagine her gazing at them as they cast their votes. The graphic quality of the admonition makes the difference; the jurors are not just reminded of the central fact that their vote is not secret, but they are urged to envisage how they are being monitored by the gods.¹⁸⁶ This is a clear breach of what looked like a convention of not stating details about the gods, which held true for all other speeches. This exceptional scene is thus one that suggests that the speech was not written for practical use.

Compared to this passage the resumption of the motif of the dikasts' responsibility seems almost feeble: at the end of the speech Demosthenes asks (§100): 'What will you say if someone detects those of you who have voted for acquittal? What will you answer? . . . Who will choose to inherit this fellow's wickedness [i.e. by acquitting him], with the curse and infamy that it entails. Will each of you deny that he acquitted him? In that case you will have to invoke a curse on the acquitters, as a guarantee from each of you that he was not himself one of them.' The warning of the consequences of a false verdict for the individual dikasts is paralleled in similar form in other speeches, both by Demosthenes and by others. However, even in this conventional admonition Demosthenes chooses a strong tone: he does not just remind the dikasts of their oath but explicitly refers to the curse that threatens them and their families with divine punishment following perjury.

Eunomia and Dike appear again, together with a number of other deities, when the god-forsakenness of Aristogiton's character is demonstrated. His loss of sense (*ἀπρόνοια*)¹⁸⁷ is described in this passage (§§32–5) as the main characteristic of the man. At the climax, Demosthenes again relies on the divine as the yardstick of what is good (§§34–5):

θεωρεῖτε δὲ μὴ πρὸς τὸν ἑμὸν λόγον, ἀλλ' εἰς ἅπαντα τὰ τῶν ἀνθρώπων ἔθνη βλέποντες. εἰς ταῖς πόλεσι πάσαις βωμοὶ καὶ νεῶ πάντων τῶν θεῶν, ἐν δὲ τοῖς καὶ Προνόιας

¹⁸⁵ Cf. pp. 80–1.

¹⁸⁶ It is, however, worth noting that he does not say that the gods *are* watching, but that the dikasts are to *believe* that they are being watched.

¹⁸⁷ On the meaning of this term cf. Diggle (2004), 250.

Ἀθηνᾶς ὡς ἀγαθῆς καὶ μεγάλης θεοῦ, καὶ παρὰ τῷ Ἀπόλλωνι ἐν Δελφοῖς κάλλιστος καὶ μέγιστος νεὼς εὐθὺς εἰσιόντι εἰς τὸ ἱερόν, ὃς ὦν θεὸς καὶ μάντις οἶδε τὸ βέλτιστον ἀλλ' οὐκ Ἀπονοίας οὐδ' Ἀναιδείας. καὶ Δίκης γε καὶ Εὐνομίας καὶ Αἰδοῦς εἰσι πᾶσιν ἀνθρώποις βωμοί, οἱ μὲν κάλλιστοι καὶ ἁγιώτατοι ἐν αὐτῇ τῇ ψυχῇ ἐκάστου καὶ τῇ φύσει, οἱ δὲ καὶ κοινῇ τοῖς πᾶσι τιμᾶν ἰδρυμένοι ἀλλ' οὐκ Ἀναισχυντίας οὐδὲ Συκοφαντίας οὐδ' Ἐπιορκίας οὐδ' Ἀχαριστίας, ἃ πάντα τούτῳ πρόσεσται.

Look not at my speech but at the general character of mankind. All our cities contain shrines and temples of all the gods, and among them is one of Athena Pronoia, worshipped as a beneficent and powerful goddess, and close to the temple of the Delphic Apollo, immediately as you enter the precincts, she has a very large and beautiful temple. Apollo, a god and seer, knows what is best. But there is no temple of Aponoia or of Anaideia. Of Dike, too, and Eunomia and Aidos all men have shrines, some, the fairest and holiest, in the very heart and soul of each man, and others built for the common worship of all. But none is raised to Anaischyntia or Sycophantia or Epiorkia or Acharistia all qualities of the defendant.

In contrast to Aeschines, Demosthenes does not discuss single divinities but presents a whole cosmos of personifications. He starts off with Pronoia, the deity who represents the opposite of Aristogiton's ἀπόνοια. Then he assembles all the negative attributes and actions he ascribes to Aristogiton that are not venerated by the Athenians. The dichotomy between these and the opposite qualities that do have a cult expresses that Aristogiton has no place in Athens, so it is an attack on his social compatibility. The form in which this is done is special: pointing to their divine nature by mentioning the temples and altars (if only in men's souls). The mention of Eunomia and Dike is clearly a reprise from the earlier passage. As a new element, Aidos is added. Her juxtaposition with Dike is again a traditional *topos*, starting from Hesiod, though she is rarely personified.¹⁸⁸ The combination is prominent in Plato, who, in the myth of the *Protagoras*, has the two values given to mankind in order to secure that human society works.¹⁸⁹ The two appear for the first time together with εὐνομία (and peace, εἰρήνη)¹⁹⁰ in Plato's *Laws*. Here too it is a myth that is told, not unlike the one in the *Protagoras*: in an earlier age, Cronus realized that the human race could not govern itself without lapsing into hubris and injustice; therefore, he conferred power on demons who bestowed peace, modesty (αἰδώς, cf. above), orderliness (εὐνομία), and justice on mankind.¹⁹¹ It is conspicuous that these concepts appear in passages with a poetic touch. They are not expressly presented as deities, but in connection with mythology, and for Plato the distinction between concept and personification cannot be a sharp one: in the last book of the *Laws* he mentions Aidos and Dike as deities, stating that 'Dike is said to be the virgin

¹⁸⁸ Hes. *Op.* 192, 200, Theogn. 291–2, 938 (Tyrtaeus *IE*² 12. 40), Eur. *Hcl.* 460.

¹⁸⁹ Pl. *Prot.* 322 c.

¹⁹⁰ There was only a cult for a specific peace (from 375), cf. Parker (1996), 229–30; what is more, peace, i.e. interstate peace, is not an idea that fits the passage, as Demosthenes is here talking only of Aristogiton's disintegrating effect on Athens.

¹⁹¹ Pl. *Leg.* 713 c. e.

daughter (*παρθένος*) of Aidos, and this is rightly said.¹⁹² This is probably a reference to Hesiod, who calls Dike a 'modest virgin' (*αἰδοίη παρθένος*),¹⁹³ though she is not described as a relative of Aidos. Whether it was this work (peculiarly interpreted) or another, we may assume that Plato drew on a poetic source.

It is unclear where Demosthenes has taken the idea from, but obviously the concepts he invokes would lend a poetic air to his speech. Both the repeated use of *αἰδώς* and *δίκη* by Plato and the image of the poets, and Hesiod in particular,¹⁹⁴ as wise men and teachers may also reinforce the impression that the speech has a philosophical character, which shines out even at the climax of an invective.

Shortly afterwards, when he accuses Aristogiton of sycophancy, Demosthenes speaks of the nine times when the defendant sued him unsuccessfully (§37):

ἀλλ', Ἀριστόγειτον, ἑπτὰ γραφὰς κέκρικας με, τοῖς ὑπὲρ Φιλίππου τότε πράττουσιν σεαυτὸν μισθώσας, καὶ εὐθύνας διδόντος δις κατηγορήσας καὶ Ἀδράστειαν μὲν ἄνθρωπος ὢν προσκυνῶ, καὶ ἔχω τοῖς θεοῖς καὶ πᾶσιν ὑμῖν, ὧ ἄνδρες Ἀθηναῖοι, τοῖς σώσασί με πολλὴν χάριν οὐδεπώποτε δ' οὐδὲν ἀληθὲς λέγων ἐφάνης, ἀλλ' αἰεὶ συκοφαντῶν ἠλέγχου.

Seven times, Aristogiton, have you launched a *graphe* against me, when you had taken the pay of Philip's agents, and twice you accused me at my audit. As a mere mortal, I make obeisance to Adrasteia, and I am deeply grateful both to the gods and to all the citizens of Athens for their protection. But as for you, it was never once found that you had spoken the truth; you were always convicted of sycophancy.

Expressing one's gratitude first to the gods, then to men, is a common pattern in Greek thought and speech, so it need not cause surprise to find it here;¹⁹⁵ and one may count it as an expression of modesty. But Demosthenes is not content with it. 'I make obeisance to Adrasteia' is normally used 'as a pious disclaimer before doing or saying something which might provoke divine anger.'¹⁹⁶ Here Demosthenes expresses the hope he may not have provoked the gods to let him be convicted next time he stands trial.

More interesting is the fact that this is again an expression that is used by the poets – and in Plato's *Laus*.¹⁹⁷ So we find another divergence from oratorical parlance and congruence with one we have already encountered. It may be more than a learned marginal note that Adrasteia was of some prominence in a group of texts that has already been mentioned: Orphic poetry. The other Platonic passage in which Adrasteia is mentioned seems to imitate Orphic teaching:¹⁹⁸ in

¹⁹² *Leg.* 943 E *παρθένος γὰρ Αἰδοῦς Δίκη λέγεται τε καὶ ὄντως εἴρηται.*

¹⁹³ *Op.* 256 7.

¹⁹⁴ Cf. Verdross (1966), 25.

¹⁹⁵ Demosthenes uses it elsewhere, e.g. 18. 249.

¹⁹⁶ M. Griffith (1983), 252.

¹⁹⁷ Aesch. *PV* 936, Pl. *Rep.* 451 A, Men. *Peric.* 304. In the orators it is replaced, for example, by the phrase *ἂν θεὸς θέλῃ* (cf. Ch. 6).

¹⁹⁸ Pl. *Phdr.* 248 c, cf. Procl. *Theolog. Plat.* 4. 17 (iv. 52. 16 53. 5 Saffrey Westerink) Orph. fr. 152 Kern (212 F Bernabé).

the myth on the chariot of the soul in the *Phaedrus*, by a statute (*θεσμός*) of Adrasteia, the goddess of necessity, the soul that manages to see something of the truth cannot be harmed until the next ascent to the realm of truth.¹⁹⁹

One more connection exists with the other passages: Adrasteia is sometimes identified with the goddess Nemesis.²⁰⁰ Now Nemesis was the last deity, together with Aidos, who left earth in the succession of the ages. It is once more Hesiod who reports this myth in the description of his own age. That the connection is felt in this place is not sure, but it is at least clear that Adrasteia as heavenly force is related in nature to the ones already mentioned in the speech and that (perhaps by this very nature) she is one of the deities one might encounter and expect to make her appearances above all in poetry. So she is also an apt choice in a speech that is full of poetic, especially Hesiodic and possibly Orphic, ideas and that cares so much about the lawful order of the state.

Poetic influence of some kind is also likely when Demosthenes associates Aristogiton with the demons and sinners of the underworld (§§52–3):

μεθ' ὧν δ' οἱ ζωγράφοι τοὺς ἀσεβεῖς ἐν Αἴδου γράφουσιν, μετὰ τούτων, μετὰ ἀρᾶς καὶ βλασφημίας καὶ φθόνου καὶ στάσεως καὶ νείκους, περιέρχεται. εἴθ' ὃν οὐδὲ τῶν ἐν Αἴδου θεῶν εἰκὸς ἔστιν τυχεῖν ἔλεων, ἀλλ' εἰς τοὺς ἀσεβεῖς ὠσθῆναι διὰ τὴν πονηρίαν τοῦ βίου, τοῦτον ὑμεῖς ἀδικοῦντα λαβόντες οὐ μόνον οὐ τιμωρήσεσθε, ἀλλὰ καὶ μειζόνων ἀξιόσαντες δωρεῶν ἀφήσετε ὡς τοὺς εὐεργέτας;

He dwells with those companions whom painters couple with the impious in Hades: Curse, Blasphemy, Envy, Faction, and Strife. This man then, who is likely to find no mercy from the gods in Hades, but to be thrust out among the impious for the depravity of his life – this man, when you have caught him doing wrong, will you not only decline to punish, but actually dismiss him with greater rewards, as you do with your benefactors?

In the first half of this extract, Aristogiton's company is described as consisting of abstract evils, that means further personifications like Dike. Pictures of the tortures in the underworld are referred to a few times in literary sources, and some vase paintings containing such motifs are extant.²⁰¹ The vices and sins mentioned are not attested, but identification with the Furies who punish evildoers has been suggested.²⁰² Aristogiton thus appears to bring the monsters

¹⁹⁹ In the late Platonic tradition a connection is drawn even between Adrasteia and Pronoia, who had just been mentioned by Demosthenes: Hermias in *Pl. Phdr.* 161 (on 248 c 2) Orph. fr. 105 Kern 209 Bernabé ἐκ τῆς οὖν προνοίας τῆς ἀκλινοῦς γέγονεν ἡ Ἀδράστεια.

²⁰⁰ *PGM* 7. 503, Schol. Aesch. *PV* 936b. The identification was not unanimous, cf. Paus. Gramm. s.v. Ἀδράστεια: in Demosthenes' contemporary Menander *PCG* 226 the two appear as separate but related forces. The identity of Nemesis and Adrasteia may be reflected, or have its origin in, the similarity of the phrase 'to make obeisance to Adrasteia' with οἷς μηδεὶς ἂν νεμεσῆσαι Dem. 20. 161 (cf. p. 247).

²⁰¹ Paus. 10. 28. 5, 29. 1–2; Plaut. *Capt.* 998–9; probably also in the *Nekyia* of Nicias, based on Homer: *Anth. Pal.* 9. 792. For vases cf. e.g. Munich Antikensammlungen 3297 from Apulia (*RVAp* ii. 533, no. 282 with plate 194).

²⁰² Dieterich (1913), 137–8, referring to Stoic allegories and Plut. *Mor.* 602 E πολιτικὰς παραχὰς καὶ στάσεις καὶ συκοφαντίας ἐριννώδεις. Cf. also Verg. *Aen.* 8. 669 *Furiarumque ora tremementem* (on Catiline in Tartarus) and the woman punishing the committer of sacrileges in Paus. 10. 28. 5.

of Hades to the upper world. One may think of a man like Orestes, being haunted by the Furies for his impiety (maltreatment of one's parents makes a particularly fitting parallel). Alternatively, Aristogiton looks himself like a creature from the underworld.

In the second half, the reference to the inmates of Tartarus is unambiguous. The mention of painters must not distract from the importance of the literary accounts of the sinners in the Underworld, which must have been a source of inspiration for the painters. Tartarus as the place of the wickedest evildoers is already alluded to in the *Iliad*; Tityus, Tantalus, and Sisyphus appear as early as the *Odyssey*.²⁰³ In the Latin accounts of Orpheus' catabasis, the punishment of Ixion, Tantalus, etc. are an important, possibly old, motif.²⁰⁴ A distinction between folk myth and reception from literature may be hard to draw.

Nevertheless, it is worth while comparing our passage with a mention of Hades we have seen earlier (Dem. 24. 104): 'Therefore, in my judgement (and though you may think what I am going to say rather coarse, I will say it without hesitation), [Timocrates] deserves, on that very account, to be punished with death, so that he may pass this law in Hades for the benefit of the impious, and leave us who are still alive in the continued enjoyment of our holy and righteous laws.' In *Against Timocrates* the speaker apparently reckons that the blunt statement about the underworld and Timocrates' place in it may offend the dikasts. In *Against Aristogiton I* there are no such restraints; the speaker does not try to apologize or to avoid the alienating effect which the former speaker feared the passage might have. He only relativizes by again referring to another authority, this time not Orpheus but fine artists.

The last significant reference to religion also has a close correspondence in the speeches considered earlier, this time in a passage in *Against Aristocrates*. Both speeches state that the laws are not primarily a human creation. We have seen this belief to be of eminent importance to Demosthenes in condemning any change to the homicide courts. So in that speech he mentions those 'who originally ordained these statutes (νόμιμα), whoever they were, heroes or gods.'²⁰⁵ In *Against Aristogiton I* the same fact is formulated thus (§16): 'The law (νόμος) is that which all men ought to obey for many reasons, but above all because every law is an invention and gift of the gods.' The tendency is the same as in the previous example: divine influence, which is only cautiously pointed out as a possibility in the certainly Demosthenic speeches (and in the speeches he delivered himself), is treated as a firmly established fact and can be used as a premiss for the argumentation.

²⁰³ Hom. *Il.* 8. 13–17, *Od.* 11. 576, 582, 593.

²⁰⁴ Verg. *Georg.* 4. 484, *Ov. Met.* 10. 41–4. Cf. Bowra (1952), 116, who thinks it is 'reasonably certain' that the Greek source contained such a passage. A confirmation of this is P. Bon. 4 (Orph. 717 Bernabé), which describes evildoers punished in the underworld. The papyrus itself is dated to the 3rd or 4th cc. AD, but the text may be older.

²⁰⁵ Dem. 23. 70 οἱ ταῦτ' ἐξ ἀρχῆς τὰ νόμιμα διαθέντες, οἷτινές ποτ' ᾔσαν, εἴθ' ἥρωες εἴτε θεοί.

The comparison of these passages reveals the contrast between the religious argumentation of this speech and the others: Demosthenes here speaks about deities in a concrete and graphic way that is found nowhere else. We encounter direct references to gods and goddesses, their realms and their actions: the gods of the Underworld consign Aristogiton in Tartarus, Dike is sitting by Zeus' side, watching the dikasts. We are not just given stock motifs such as Athena as patroness of the city or myths of the type that appear in tragedy, but abstract concepts treated as deities with genealogies and common perceptions of the Underworld. In this respect *Against Aristogiton I* surpasses even Lycurgus' speeches, where the stories and anecdotes are introduced merely as paradigms to illustrate the presence of the gods. Reference to the gods is made by name, and despite referring to other genres from which he takes his ideas the speaker does not indicate that what he says might be more appropriate for Orphic poetry or paintings than oratory.

All these passages, unusual either in content or in the explicitness and bluntness with which the content is presented,²⁰⁶ lead to the question of what type of person the speaker pretends to be. I have mentioned that he alludes to having been a victim of Aristogiton as a consequence of his policies in Philip's lifetime (§37). Similarly, he describes himself as a still active politician when he says that Aristogiton has recently only sued ordinary people, not orators such as himself or Lycurgus (§38). However, the tone is markedly different from that of the political battles fought by Demosthenes, Aeschines, and others. On the one hand, Aristogiton is not viewed as a peer; on the other hand, the orator turns out to be more than just a politician. In places the digression on the laws reaches a philosophical level; in others, the motifs used are poetical and of a register alien to the orators.

The same applies to the language that is used in the speech. Some unusual features have been mentioned earlier. A good number of the non-Demosthenic words do not appear in any oratorical text. What is even more significant is a number of words that seem to be poetic or otherwise alien to oratorical prose.²⁰⁷ Finally, in places Demosthenes seems all but to quote lines from tragedy and

²⁰⁶ Kramer (1930), 62 tries to show that Orphic references were common, but cannot produce more than vague allusions to Hades, except in Plato.

²⁰⁷ Regular Attic prose in this context excludes Xenophon and (especially the late) Plato, on whose semi-poetic style cf. Pomeroy (1994), 11–15 and Thesleff (1967), 170. I disregard technical terms in this compilation (e.g. ἀποσχοινίζω, βούλευσις, κυκλῆς), as their absence in other speeches may be conditioned by factors other than style. Examples are δακτυλοδεικτέω (§68) Aesch. *Ag.* 1332, *TrGF* 57, δυσκατάπαυστος (§49, there is no other compound with δυσ- and another prefix in Demosthenes) Aesch. *Choe.* 470, Eur. *Med.* 109 (both in lyric passages), νεαλῆς (§61) Ar. *PCG* 378, Xen. *Cyr.* 8. 6. 17 and once in Plato's late works (*Pl.* 265 b), νεῖκος (§52) Isoc. 15. 268 (citing Empedocles!), Pl. *Soph.* 243 a, Xen. *Cyn.* 1. 17, χολή (§27) figuratively e.g. Ar. *Pax* 66. Only one of these terms occurs in a passage which has been highlighted as poetic. Other striking terms may include μαγγανεύω (earlier only in Ar. *Pl.* 310), ταριχεύω, φυσιογνωμονέω.

comedy. The formulation with which Demosthenes refers to Orpheus: 'Orpheus, who has taught us the most sacred mysteries,' has often been taken as a borrowing from Aristophanes' *Frogs*: 'Orpheus taught us mysteries and that we must stay away from killing.'²⁰⁸ The difference, the more specific reference to Eleusis ('the most sacred initiations'), and the terminological character of the verb preclude certainty about this being a quote.²⁰⁹ However, the poetic flavour of the rest of that paragraph suggests that Demosthenes may well allude directly to Aristophanes or to some Orphic source Aristophanes himself drew on. This is made even more likely by other parallels to dramatic texts that have been detected.²¹⁰

Scholars who tried to reclaim the speeches for Demosthenes have shown parallels for all or almost all these phenomena.²¹¹ What they cannot explain is why elements that are exceptional and occur only once or twice in the entire Demosthenic or oratorical corpus seem to be accumulated in this speech. The list of such otherwise rare features stretches from single words like 'beast' to motifs such as the link between the laws and the gods.

In the speaker's performance and self-presentation we thus find three elements that have not appeared to be central to the way in which Demosthenes appears in his other speeches: the moral authority claimed against Aristogiton's wickedness, the philosophical and legal theorising, and the inclination to including poetic parlance and motifs. All three are combined with religious argumentation of unprecedented vehemence or extensiveness. The motivation for the first two may seem to have a clear purpose in the rhetorical strategy: to dissuade the dikasts from showing mercy to Aristogiton. The question is whether this aim required Demosthenes to abandon the use of religion practised in his other speeches. It is conspicuous that if he really delivered this speech, he did not just give up his personal style of religious argumentation; instead, he changed his style to the other extreme: from a very economical use of religious argumentation to an excess that surpasses even the most religiously authoritative speakers in some aspects and, in addition, with a tendency towards Hesiodic/Orphic ideas.²¹² In this context we must not forget that as far as we can infer from Dinarchus' speech against him (presumably not too long afterwards) the religious standing of Demosthenes had not changed dramatically since the trial on the crown:

²⁰⁸ *Ran.* 1032 Ὀρφεὺς μὲν γὰρ τελετὰς θ' ἡμῖν κατέδειξε φόνων τ' ἀπέχεσθαι. Cf. Schläpke (1913), 93, Graf (1974), 31.

²⁰⁹ On καταδείκνυμι cf. Graf (1974), 32 with n. 47 (e.g. Acestorodorus *FHG* ii. 464, Diod. Sic. 1. 29. 2).

²¹⁰ Cf. Schläpke (1913), 92 3: e.g. §35 ~ Eur. *TrGF* 170 βαμὸς αὐτῆς ἔστ' ἐν ἀνθρώπου φύσει; §88 ~ *Hipp.* 463 νοσοῦνθ' ὁρώντας λέκτρα μὴ δοκεῖν ὀράν.

²¹¹ Especially Kramer (1930), who deals with most of the points that had been raised to his time of writing.

²¹² There may be more Orphic influence in the speech than we can detect. For example, §8 πάντα τὰ τοιαῦτα θηρία, ὧν μέσος καὶ τελευταῖος καὶ πρῶτός ἐστιν οὗτος has been compared with Plato (*Leg.* 715 E) ὁ μὲν δὲ θεός, ὥσπερ καὶ ὁ παλαιὸς λόγος, ἀρχὴν τε καὶ τελευτὴν καὶ μέσα τῶν ὄντων ἀπάντων ἔχων and (as Plato's source) Orph. 31. 2 3 (cf. 14) Bernabé Ζεὺς κεφαλὴ, Ζεὺς μέσσα· Διὸς δ' ἐκ πάντα τέτυκται / Ζεὺς πύθμην γαίης τε καὶ οὐρανοῦ ἀστερόεντος, cf. Masaracchia (1993), 191.

Dinarchus can still describe Demosthenes as the ἀλιτῆριος who wrecked Athens. There is no indication that Demosthenes was able to assume a role that allowed him to play the religious card more than before. The argumentation is so different that we may even doubt whether a normal audience would have readily accepted it from any speaker: the abundance of personifications and minor deities is too remote from anything we find in other speeches.

The motive for the third element of the self-portrayal, the affinity to poetry, is hard to find, anyway, so it may be tedious to press that for the first two. If Demosthenes had aimed only at religious authority, he would not have had to do more than introduce the relevant contents. Instead, he produces a consistent style, not restricting the shift to passages of religious significance. He even seems to allude to the character of his (and Lycurgus') speech at the start (§2):

ἐγὼ γ' ὑπολαμβάνω . . . κεκρίσθαι δὲ τοῦτο τὸ πρᾶγμα πάλοι ὑπὸ τῆς ἐκάστου φύσεως οἴκοθεν, καὶ νυνὶ εἰ μὲν εἰσιν ὑμῶν οἱ πλείους οἳ τοὺς πονηροὺς φιλεῖν καὶ σῶζειν, μάτην ἐρραϊσθηκότας ἡμᾶς ἔσεσθαι, εἰ δ' οἳ μοι μισεῖν, δίκην, εἰ θεὸς θέλῃ, τοῦτον δώσειν.

I suppose . . . that the case has been already decided by each one of you in his inmost conscience, and that, if the majority of you are men disposed to admire and protect rascals, we shall have declaimed our songs in vain, but if you are disposed to hate them, then god willing this man shall pay the penalty.

The speech is characterized as *ῥαψωδία*, the recitation of epic poems, which matches the content of the passages presented. In one of the early assembly speeches he uses the word in a similar way for repeatedly delivering harangues without any impact (Dem. 14. 12). The formulation is such that it becomes clear that the word still evokes very much the idea of the wandering singers and is not yet used as a synonym of vain talk.²¹³ The metaphor is neither trite nor dead. So even if Demosthenes means by his words in *Against Aristogiton I* that he will speak without a chance of effecting anything, he is not just producing a pleonasm with *μάτην*. He associates his speech with the poems sung by travelling artists at festivals. The poems of Hesiod, in which so many of the speech's personifications appear, are certainly included in this group.²¹⁴

So the speaker alludes to himself (and Lycurgus, whom the predicate suits as well, cf. Ch. 5) as a singer. He distances himself to a certain extent from the 'mere' orator and announces an important and salient aspect of his speech. So if Demosthenes is indeed the orator, he calls attention to the unusualness of his speech early on.

A final conclusion on this speech cannot be reached; one can only evaluate each of the possible assumptions about authenticity and purpose. For neither the style nor the content guarantees or excludes Demosthenic authorship.

²¹³ The combination with *περιέειναι* is standard: Pl. *Ion* 541 B, *Rep.* 600 D. On religious arguments in the speeches of delegations cf. above, n. 148.

²¹⁴ Cf. Nicocles/Nicocrates *FGH* 376 F 8.

However, if the speech is a later forgery, we could disregard it. If it was written by a contemporary, it will only add to the range of argumentative means that were at the orators' disposal. But some features point to nobody but Demosthenes himself as the author; and there is no indication either of the speech being planned or even making sense as a pamphlet or an exercise of his. As to the former possibility, there is no clear consistent message behind the text – the legal argument is skipped on the grounds that Lycurgus has already brought it forward; as to the latter, why should Demosthenes practise a style and the formulation of arguments he cannot use?²¹⁵

As none of these explanations can claim to be satisfactory (let alone inevitable), we must take the possibility seriously that Demosthenes wrote the speech for use in court. Even in that case, however, we can say that the extravagance in the religious argumentation comes with a couple of other changes. On almost all levels the speech diverges to some degree from Demosthenes' usual practice. The difference in language may therefore only be a symptom of the clear change of ethos. One of the most fundamental differences from the other forensic speeches Demosthenes delivered is that he is not recognizable as the speaker: we hear that he used to be anti-Macedonian, but he does not speak about his own actions or achievements. As a result the speech largely lacks the character of a direct confrontation between Aristogiton and him; rather, the style is impersonal, and the speech could be delivered (apart from one or two remarks) by anyone. The history of the conflict between the two speakers is only mentioned as a demonstration of Aristogiton's mendacity in court: he has never won against the speaker despite many attempts. One reason why the portrayal of the prosecutor is kept so unspecific may be the method of, and his attitude towards, his appointment: he has been elected by the assembly, against his will (§13). That means he has not chosen to appear but has yielded to the public and need thus not show any personal motivation. For his authority is higher, since he has been entrusted with the office by the people.²¹⁶ This causal nexus cannot be affirmed from the speech, but it would explain why the argumentation is so different from that of other speeches. The higher authority may then enable him to assume the vituperative and uncompromising tone that denies that it is even necessary to defeat

²¹⁵ Blass's observations (1887, 138–40) by which he tries to prove that Demosthenes refused to act as prosecutor and that the speech was never delivered are ingenious but fail to convince: *κατατάπτοντας* (§13) need not be *de conatu* but could mean that in the various assemblies where the matter was treated he always seemed a suitable prosecutor. His idea that the formulation in Photius (cod. 265, 491^a35–6) αὐτὸς ὁ Ἀριστογείτων ἀνομολογῶν Δημοσθένην κατ' αὐτοῦ γεγραφέναι, means a written but undelivered speech is wrong (cf. Dem. Ep. 3.29), and the words could in any case refer to a logographic speech as well.

²¹⁶ Cf. Rubinstein (2000), 111–12 on cases with publicly elected supporting speakers: 'it is in these types of procedure that we should be most likely to find elected prosecutors who acted formally as the voices of the community as a whole, and who were perceived not as the supporting speakers of any individual prosecutor, but as representatives of the πόλις in its entirety.'

the defendant by way of argument. It may also pave the way to a style of argumentation that is normally alien to oratory: it allows him to take arguments from genres that approach matters of forensic relevance from a more ideal perspective: poetry and philosophy. If that is the case, it may have been possible even for Demosthenes (if we are dealing with him) to discard his usual manner and assume a rhetorical style that was exceptional. However that may be, the style of the religious argumentation depends on a change in the entire ethos of the speaker. Arguments cannot be employed in an arbitrary manner, but the rest of the speech needs to be accommodated to them, or the other way round: one can only use certain arguments, if the rest of the speech prevents them from being obtrusive.

There is, however, one way left in which Demosthenes could be retained as the author of the speech without such assumptions, namely as logographer for another speaker. This would explain why the speech is both so similar to Demosthenes' certainly authentic ones in style and so dissimilar in argumentation. Technically, there is no problem to this solution: when the assembly or the council elected prosecutors, they normally elected more than two.²¹⁷ So even if Demosthenes wrote a speech for himself to deliver at the trial, the extant speech could be another product of his, composed for someone else. Indeed this solution seems the most plausible one. For the speaker once alludes to his ethos, without really saying what it consists in or revealing anything of his personality (§14):

ἀ δὲ καὶ λογίζεσθαι τοὺς ὑπὲρ πόλεως καὶ νόμων βουλευομένους προσήκει καὶ σκοπεῖσθαι δεῖ, ταῦτα προηρούμην εἰπεῖν, καὶ νῦν ἐπὶ ταῦτα πορεύσομαι. δότε δέ, ὦ ἄνδρες Ἀθηναῖοι, δότε καὶ συγχωρήσατέ μοι πρὸς Διός, ὡς πέφυκα καὶ προήρημαι, περὶ τούτων διαλεχθῆναι πρὸς ὑμᾶς· καὶ γὰρ οὐδ' ἂν ἄλλως δυναίμην.

I resolved to devote my speech to those points which ought always to be considered and examined by those who are deliberating in the interest of the state and of the laws: and I shall now proceed to deal with those points. But by Zeus, do you, men of Athens, grant me the privilege of addressing you on these topics in the way that suits my natural bent and the scheme of my speech, for indeed I could not speak in any other way.

This remark, right at the start of the 'philosophical' digression, is nothing but a request to grant the speaker the concession to make his speech in the manner that suits his ethos. The speaker admits that his way of argumentation is unusual and might not meet the expectations and the tastes of the dikasts. However, it is neither plausible that Demosthenes himself can claim that the style of the following argument agrees with 'who he really is' nor in any way credible that

²¹⁷ Rubinstein (2000), 113 15: where we know a number, it exceeds two (*IG* i³. 102. 23, restored, but certainly more than two speakers; Plut. *Mor.* 833 E F); we shall see a like case in the trial against the law of Leptines, Ch. 7. The Phaedrus of §54, whom Rubinstein (2000), 30 n. 15 believes to be a supporting speaker, is probably a witness; this is suggested by the parallels in formulation with the subsequent clause on the witnesses of Aristogiton's maltreatment of his mother (ὥσπερ ἠκούσατε, πρὸς μὲν γὰρ τῷ τὸν πατέρα(α) . . .).

he states that he could not do otherwise.²¹⁸ It is an irony that the speech suits best the style of the one person we can rule out as speaker with absolute certainty: Lycurgus.

In this speech the arguments are remote from the standard, just as in *Against Andocides*. There it appeared to be the speaker's specific role that accounted for the peculiarity of the argumentation. In the present case, we cannot be sure about the reason for the odd-seeming poetic and philosophic stance of the speaker. What we can say, however, is that if this was a product written for the courts, it offers awkward features in many respects and by any standard, no matter who the speaker is. Whoever delivered the speech, the audience may have been surprised at the stance he took and the way he spoke. What he says on religion is, however, in tune with the rest. So even if it were Demosthenes, he would not have changed merely his style of religious argumentation but his whole approach and the *persona* who delivers this speech.

²¹⁸ Another statement that is not easily reconciled with Demosthenes as speaker concerns the speaker's reluctance to act as prosecutor (§13): 'I was not unaware that he who plays such a part in your courts suffers for it in the end, not perhaps so as to feel it at once, but if he undertakes many such tasks and perseveres in them, his character will soon be recognized.' Can we assume that Demosthenes was not already known by about 325 to be an experienced and dangerous prosecutor?

Conclusion I: The Importance of the Individual

A MAJOR speech in a political trial without any references to the realm of religion, it seems from the preceding analysis, was in practice unthinkable in fourth-century Athens. The references had too many forms and functions to make complete absence likely or total avoidance feasible. The speeches mention public dealings that took the form of rites and sacred buildings; they refer to objects that could be used for religious purposes and public officers who could and, as a rule, did have religious duties. So the religious realm is continuously present in any discourse. However, the religious component in these elements of public life was not exclusive: sometimes a temple was just a landmark building and an archon just an administrative official. It is necessary to differentiate between a casual use of facts, objects, and institutions that have a connection with religion and the purposeful and significant employment of these elements.

The last chapter has shown that considerable differences exist between the orators in the types of relevant elements they include in their speeches. The difference is particularly great in the 'positive' use they make of religion. They all follow different practices and vary in the extent to which they point out their own competence in the field or compliance with the demands of piety. Remarkably, of the two politicians whose speeches were pervaded by references to religious matters, this tactic is pursued less by Lycurgus, who could actually do it more easily than Aeschines.¹ However, it may have been just his eminent position in the public cult that made it needless to state his authority explicitly: people knew him, and he proves his expertise by the particular features of his speeches. By contrast, Aeschines, after so many years in politics, still seems to feel the need to compensate for his lack of authority. He likewise stresses his competence in religious matters, be it before Philip or at the Delphic amphictyony, and defends his singing the paean with the enemy by labelling it a pious action. The types of argument he uses as well as his appearance as Athens' moral conscience suggest that in order to back up the credibility of his ethos and of his arguments he had to

¹ His standing apparently made him unassailable to Hyperides, cf. Hyp. 2. 3 with Whitehead (2000), 114. Diondas apparently prosecuted Lycurgus for ἀσέβεια, an enterprise Hyperides apparently finds not just unsuccessful but revealing about him: Carey *et al.* (2008), 3. 19–20.

be consistent in both. His repeated election for offices in connection with Delphi confirms this.²

The widest spectrum of 'negative', denigrating use of religion is represented by *Against Andocides*. The opponent is accused of being impious, and the impiety results in, on the one hand, the gods' intervention and, on the other hand, pollution that threatens to infect the whole city. The motifs are presented both separately and in combination. In the speeches of Aeschines and Lysias they are also exploited, but again the two orators show opposite tendencies: the relations of individual, state, and gods (that is in particular questions of loyalty and worship) figure most prominently in Lysias. Obligations towards the gods and their support in return are exemplified in a long series of digressions. The gods are described as interested in human affairs and willing to intervene in them. However, Lysias does not speak of pollution, which is the favourite motif of Aeschines. The latter permanently emphasizes the moral inferiority of his opponents; their trespasses and misconduct become relevant in religious categories through the pollution that is thereby caused. The next step, in which pollution offends the gods and may lead them to action, is not brought to the fore: there is no direct statement that it could be the gods who take action against those defiled; at best they warn (Aeschin. 3. 130). The idea that Apollo's dignity is diminished by the illegal use of his sacred harbour (with Demosthenes' support) is left untouched – in contrast to the pollution disseminated through the money the Amphissians pay for politicians' silence. Likewise, when Aeschines complains about the ineffectiveness of laws bearing a defiled person's name, the only overt and unequivocal statement is that a person like Timarchus is unclean and therefore disqualified from priesthoods. The hint that the Solemn Goddesses may refuse to support a law that has Timarchus' name on it is clad in the form of a rhetorical question. Thus Aeschines is explicit when he speaks about the opponent, his state of pollution, and the impropriety of his public activity, but not when he suggests what the Solemn Goddesses do or do not do (Aeschin. 1. 188). He also does not refer to any specific god apart from minor deities or in quotations from poetry. Thus the motifs connected with impiety can be exploited, but it depends on the speakers if they do so or not.

There is one more point to state, even though it should have become obvious in the preceding comparison: the speakers are consistent in their choices. Aeschines, the only one of whom we have more than one full speech, does not change from the 'Lysian' style to one relying more on pollution. Lysias in his public forensic speeches seems to emphasize frequently the connection between the gods and the *πόλις*. The significance of this observation lies in the fact that the style of argumentation is not wholly dependent on, or even

² In 346 Aeschin. 2. 139, in 343 (but rejected by the Areopagus) Dem. 18. 134 (Plut. *Mor.* 840 E states, probably wrongly, he was only standing for the post), in 340/39 Aeschin. 3. 115. As dedicant to Asclepius CEG 776.

determined by, the individual speech. Orators do not just select motifs closely connected to the nature of the case. The connection rather works the other way round: they favour certain motifs (for some reason or other) and adapt them to whatever case they are pleading. As the case of Aeschines shows, Lycurgus, famous for the importance of religion in his speeches, was not the exception in his consistency but the rule.

Another fact that deserves to be highlighted in this context is that, despite all differences, in the accusations of all these orators we find arguments that rely on religious ideas and cannot be convincing unless the religious content of the argument is accepted. When Lycurgus describes how the gods have supported those who have acted righteously, there is no chance of an allegorical interpretation. In the myths and anecdotes the activity of the gods is one that directly influences the course of events and may give it a new direction. Equally, Aeschines' warnings against Timarchus and Demosthenes cannot be read as an attempt to highlight the social stain of his adversaries: the idea that a polluted man's name on an inscription makes the laws and prayers on the same stone void presupposes the idea of contamination and perhaps even offended deities – an interpretation that transforms defilement into social or moral blemish would not work. So the audience must accept the assumptions concerning physical pollution and its consequences on one's relation to the gods; otherwise they will find nothing that could persuade them to agree with the argument. Lycurgus even seems to give the desertion of the gods greater weight than that of the city as such (p. 158).

However, even though the three authors go very far in adducing arguments from religion, they avoid transgressing certain limits which seem to have been universal. First, the gods are never described in detail. Orators may ascribe certain events to the intervention of the gods, but they rarely specify the deity responsible (e.g. Lys. 6. 3). Likewise, myths in which the gods appear in person are avoided. Excepted are only the stories in connection with the Areopagus, but these are stock motifs and not directly related with the case itself or the participants but underscore the value of Athenian institutions. With this type of reference, as with various others, the author of *Against Aristogiton I* shows least moderation. Nevertheless, he too imposes certain restrictions on himself in that he does not present the extremest possibilities as his own views: he either appeals to the dikasts to *imagine* the gods (§11) or refers to poetry and art which he takes his motifs from, thus marking them in a way as alien to oratory.

Second, the orators are very cautious when they mention the possibility that the gods may not always back Athens: statements that may be counted as bad omens are avoided; the possible alienation of the gods in *Against Leocrates* (§§26, 82) is stressed to be hypothetical, and only the defendant risked provoking it. Aeschines' doubts of the efficacy of laws that bear the name of Timarchus may be as far as a speaker dares to go: the danger to the state is wrapped in a rhetorical

question to avoid a straight statement that the Solemn Goddesses will not accept the inscribed prayers and will reject the city's decrees.³ Instead the speakers repeat the mantra about the gods' goodwill towards Athens (which will occur again in Part II). The exception that proves the rule is the threat following a wrong judgment in the present trial. Both Lycurgus and the speaker of *Against Andocides* warn the dikasts that the gods may punish the city if she (represented by the jury) does not convict the defendant.⁴ However, in both cases the offence for which the defendants are standing trial is described as one against the gods and their worship. This is the only reason why they take an interest in the verdict of the jury and why they could be alienated by it. So if the punishment is not executed, it is not they who let down Athens. Instead, they come upon her to take revenge. What permits mentioning a danger to Athens is that the gods do not spontaneously deprive the city of their favour, but they have been deserted first, and the city has forfeited its claim to benevolence.

These examples of inhibitions observed by all orators (with the partial exception of the speaker of *Against Aristogiton I*) are a strong indication that there were relatively strict conventions. In the same way as it is not possible to question the self-glorification of the Athenians, for example as regards the equality of the citizens, Athenian orators blot out a part of reality unwelcome to the audience.

The caution with respect to describing possible alienation of the gods or the danger of contracting impiety on the city's part becomes clear if contrasted with the treatment of individuals. What is inadmissible in connection with the city may still be said about the opponent, his supporters, or even the dikasts. The speaker's enemy may be described as defiled, the dikasts warned not to perjure themselves by passing the wrong judgment and to destroy their families. By contrast, where acquittal does not mean that an offence against the gods remains unpunished, speakers only insinuate in vague formulations that the city may be endangered by the acquittal of an innocent. Aeschines in the above example on Timarchus' name in laws falls back on a rhetorical question. In other cases, the consequences are left unsaid: Euthycles mentions that if Aristocrates' decree is confirmed by the dikasts, the Athenians will 'live together with unclean people' (Dem. 23. 43). He does not state that they themselves and the whole city would be polluted thereby. Similarly, Athens' misfortune in the war against Philip was, according to Aeschines, caused by Demosthenes' *δαίμων*, whereas the gods see to her protection; so she was affected by, but apparently not infected with, his contagion. Thus the distinction between what was allowed or unacceptable looks relatively clear-cut. The city as such must not be associated directly with the evils of impiety and pollution, whereas people may. In that sense one might interpret Demosthenes' insistence on the dikasts' perjury in *On the False Embassy* partly as an attempt to avoid the delicate topic of the city's guilt by speaking about what the acquitting dikasts incur.

³ Aeschin. 1. 188, cf. also 2. 158.

⁴ Lys. 6. 3, 33 (in both cases vengeance may fall upon the dikasts alone or the city in total), Lyc. 148.

If we direct our attention towards Demosthenes, we find that in the speeches he wrote for others religion is not used significantly differently than by Aeschines and Lycurgus. The invective against Androtion exploits the motifs we find in Aeschines' attacks too: the opponent has committed sacrilegious acts and is unfit for any form of sacred office because he has performed disgraceful physical acts by which he incurred pollution. In *Against Aristocrates* it is the complex of homicide that opens up the possibility for Demosthenes and his client of introducing the warning of pollution. Given that Aristocrates' decree formally constituted a modification of homicide procedures, touching on pollution and the myths surrounding the Areopagus was close to hand. Thus the full exploitation of religious motifs is not surprising. Nevertheless, their treatment was certainly not mandatory, so Demosthenes chose to include them in his speech. He uses them to enhance the seriousness of Aristocrates' intended changes, but he could probably have made his point without constantly referring to the impeccableness of the existing homicide regulations in religious as well as in other respects, to the gods' approval and to the pollution that might spring from an execution without trial. In the two speeches delivered by Diodorus the accusations of Androtion are largely unrelated to the charge. In the earlier speech they just provide the full picture of the defendant or, in *Against Timocrates*, of the beneficiary of the law under debate and the supporting speaker. So it is again Demosthenes (presumably in cooperation with his client) who decided to lead the attack along this line; he was not forced to use any of this material in his speech. Moreover, religious matters partly form an independent point; they do not just back up the moral connotations of a misdeed, but must be interpreted as relying on the specifically religious content of the accusations.

When we turn to the speeches in which Demosthenes himself is performing, his use of religion is different from all the other speeches considered. As a general trait he is more economical with drawing on the exclusive characteristics of religion. The speech that allows the smallest role to this kind of religious argumentation is *On the Crown*. Apart from the three prayers which give the speech a slight religious inflection there is hardly anything that exploits the gods or religious institutions. Even the prayers, as we have seen, though they naturally leave their intention unexpressed, have a defensive purpose and are meant to distract from the religious potential of the case. Since Demosthenes otherwise tries to avoid or push aside all religious aspects of the case and Aeschines' prosecution, the speech may serve to define a benchmark of what religious references were relatively low-key and inconspicuous.

The most eye-catching use of religion in the speech may be when the gods are mentioned. The only such instance apart from the invocation of Apollo at the start of the Amphissa episode is the citation of Zeus' oracle that confirms the good τύχη of the city (Dem. 18. 253). Demosthenes refutes Aeschines' claim that Athens has suffered from his τύχη. The main content and purpose of this oracle seems to be reassurance of the Athenians. The content follows the

lines of the Athenian doctrine that the city is blessed and dear to the gods. From the way Demosthenes speaks about it, we must assume that the text was not very specific, rather a response to a relatively recent general inquiry after the disillusionment of Chaeroneia.⁵ In any case, it was accepted by the *πόλις* as an official statement expressing a principle that was in line with the doctrine that the city was safe as far as the gods were concerned. It is therefore connected with the second complex that is given space in Demosthenes' argument: the general goodwill of the gods. Their support for Athens is not questioned in his speeches any more than in the other orators'. The motif is central to the Athenians' self-perception, a centrepiece of their ideology; and it is backed by the oracle. It is worth noting that in *On the False Embassy* an oracle with a (probably) similarly general message is read out and interpreted with the same tendency. Demosthenes uses it to show 'that the gods contribute more to the salvation of the city than its leaders' (Dem. 19. 297). Whatever the exact content, Demosthenes plays off the gods' support against the policies of the leading orators. Demosthenes again invokes an official *topos* of Athenian self-assurance.

In the third speech of this group, too, oracles are read out (Dem. 21. 52–3). These are quite specific and rather different in content. Apollo and Zeus prescribe sacrifices and performances, so these oracles are no general advice but have normative force in a specific matter. However, Demosthenes cannot use them as immediately relevant evidence (equivalent to statutes) for the case he is trying; instead, he uses them to induce the general principle that the city has to form choruses and (make them) wear crowns. In all three cases the oracles are given to the Athenians. They have an official character and were probably the result of official missions of the state to Dodona and Delphi and are thus different from the prophecies and sayings the seers in Athens produced and sold. They do not deal with concerns of individuals but the well-being of the city and the citizenry as a whole. The connection with the motif of Athens' general prosperity makes Demosthenes seem to be referring to an arsenal of general wisdoms on which the state's idea of itself rests.⁶

This is true in an even more general sense for the third context in which Demosthenes introduces the gods in *On the Crown*: in the gnomic interpretation of events. Demosthenes draws on the most widespread and thus least objectionable source of knowledge about the gods, everyday sayings and platitudes about the unpredictability of the future. Nobody expects a speaker to present controversial opinions about beliefs, as for example the tragedians can do;⁷ but

⁵ Dodona was the Athenians' main oracle after the Delphic Pythia had become suspect of 'philippizing' (Aeschin. 3. 130) in the 340s, cf. Parker (1985*b*), 315–16, Giuliani (2001), 242–3.

⁶ Compare e.g. the use Aeschines makes of the oracle of the amphictyony (3. 108, 112): an oracle from the time of Solon justifies the First Sacred War, which serves as precedent for the actions Aeschines sparks off. Lycurgus cites the oracle to Codrus in the war against the Spartans (§84–7). Such old historical or semi-historical oracles are not used by Demosthenes.

⁷ Cf. Yunis (1988*b*), 39–41, 72: the belief in the gods was so deep-rooted that the jury would have been likely to feel unsettled or even threatened if someone had questioned their most

Demosthenes carries his employment of agreeable commonplaces to an extreme, applying arguments with the utmost suggestive force which practically no-one can oppose.

The three important religious motifs in *On the Crown* thus all draw on stock motifs; they derive from official discourse, as in the case of oracles, or from private, as with the maxims; the goodwill of the gods must be located in between, as it belongs in the public sphere (probably) without being fixed in any official form. What they have in common beyond this source is their general applicability: the motifs are sayings and beliefs, *communes loci* which in themselves have little argumentative value and need to be specified and connected with other ideas or facts to be used in favour of or against a person: that the gods or some *δαίμονες* distribute people's fate is not apt to convince the Athenians of anything. As they stand, the motifs prove at best that the speaker has some respect for the divine sphere but hardly more than is absolutely necessary to avoid allegations of godlessness: the motifs seem so trite that it is hard to attribute to them any major religious significance.

The religious argumentation in the other two speeches is more frequent and pointed. This can be seen, for example, from the use of oracles in *Against Midias*: these are, in fact, meant to prove that Midias has committed an act Demosthenes can insinuate to be impiety. However, even in these speeches he uses religious references with great restraint. Accusations of impiety are rare and generally not put bluntly. His caution with regard to labelling Midias' punch as impiety has been demonstrated. The *ἀσέβεια* aspect of Midias' deeds is hinted at in a number of passages, but if anything, it is *ἀσέβεια* as a public, not a specifically religious offence that arrests his attention: Midias acts irresponsibly and in a broadly antisocial way. In general, the strategy of Demosthenes does not rely on a consistent depiction of the opponent as impious. In Midias' actions in which religion plays a part this religious connotation is not normally highlighted as one that changes the nature of that action. Midias' aggression was particularly serious because it happened at a festival and his victim was a (putatively) religious official. Similarly the fact that Aeschines' treason forced the Athenians to make changes to the Heracleia heightens the significance of his deed. However, in both cases the point is to aggravate the seriousness of the offence, not to present it specifically as impiety (making it worth persecuting in itself). Instances of religious and non-religious offences juxtaposed can serve as a confirmation of this.⁸ The offences against the gods are not transformed into a separate charge, nor do they constitute the core of the argument, but at best the most serious aspect of it.

Abuse in religious terms is equally infrequent and does not occur in clusters in which the religious connotations of each instance reverberate and reinforce each

fundamental beliefs. On the fallacious representation of beliefs in tragedy cf. Dover (1974), 14–18, Mikalson (1983), 9–10, but cf. Parker (1985a), 90–1.

⁸ Cf. 19. 287 (Aeschines' brothers) or the mockery of the occupations of Aeschines and his parents (Dem. 18. 258–62).

other (as in the description of the homicide procedures as ὄσιον, καθαρὸν, etc. in *Against Aristocrates*). Demosthenes does not totally avoid the standard Greek language of abuse, which is largely based on religious terms. However, such vocabulary is used as an expression of abhorrence and to bring out the inferior moral or social status of the person. Philocrates, for example, is called *μαρὸς* three times in *On the False Embassy*, while nothing indicates that he is supposed to be viewed as anything but a traitor – while the potential religious connotations of treason are in no way specifically alluded to. People can even be called *ἀσεβής* without a clear hint of what could constitute the connection with religion. The qualification as impious can be described as general disapproval or a reproach of deviance.⁹

When I have said so far that Demosthenes ‘as a rule’ does not describe his opponents as impious or the like, the exceptions to that rule are the passages in which Demosthenes defends himself against religious allegations. The same applies to the allegation of pollution, which is introduced in several speeches, partly in combination with allegations of impiety.¹⁰ In *Against Midias* it was noteworthy that the indignation in religious terms was strongest not when Demosthenes accused Midias of disrupting the festival. Instead, he is most outspoken when he turns back the accusation that he was polluted as a consequence of the involvement in the murder of Nicodemus. Impiety and pollution motifs are combined; slander occurs in uncommon forms (‘polluted and shameless head’, §117; ‘impious and polluted’, §114) that seem to avoid the triteness of other phrases. The religious emphasis is facilitated by the closeness to homicide, but it is likely to be ultimately caused by Midias’ own accusations. The parallel of the *Parapresbeia* speech affirms this: where the opposition between Aeschines and the gods is made most explicit, it is combined with Demosthenes’ self-exoneration from objections that Aeschines links with religion (the accusation of his fellow ambassador); the gods somehow led Aeschines to worsen his own position and thus maximize the dikasts’ indulgence towards Demosthenes’ prosecution (§§256–7). The first two prayers in *On the Crown* are used in a similar way, but Demosthenes does not throw back Aeschines’ accusations but sidesteps them, providing space for himself to refute the religious points on a non-religious level. Even in the defensive passages, though the religious ideas in them can be explicit, belief in the relevant religious motifs is not required for the argument to work. For Demosthenes points out inconsistencies in the opponent’s actions or the dikasts’ behaviour.¹¹

⁹ Dem. 18. 240, cf. Din. 1. 21.

¹⁰ Throwing back religious accusations at the opponent is not particular to Demosthenes, but can be found in other orators as well. Common though it is, this tactic does not seem to be the subject of rhetorical treatises. Examples from other orators are Andoc. 1. 130–1, Lys. 30. 18–21.

¹¹ e.g. Midias not preventing the allegedly polluted Demosthenes from sacrificing (21. 114–15), his accusations against and visits to Nicodemus (21. 118–19), and the dikasts’ curse on traitors at the assembly (19. 70). We shall find something similar in *Against Leptines*, below, Ch. 7.

As rare as unambiguously religious elements in attacks on rivals is Demosthenes' use of religion in his own (positive) self-depiction. Only in the list of his sacred offices during his term as councillor does he connect himself with the religious sphere. Even there (Dem. 21. 114–15) Demosthenes does not point to the light the functions and sacrifices shed on him, but the proof of his purity is a by-product, serving to refute Midias' accusations. Extended depiction of conformity with religion cannot be found anywhere.

In lieu of points exclusive or specific to religion, the religious argumentation in the speeches Demosthenes delivered himself mainly has different functions. Religion helps to make points on other matters: in most cases it highlights his opponents' social unacceptability and the damage they do to the state and the public. Demosthenes exploits the fact that the city is at the same time a cult community, so an affront against an organ or object of worship is also an expression of hostility towards the state (but not vice versa; that direction is only touched on by Lysurgus). Since Midias attacks Demosthenes at a festival organized by the state, his lack of respect towards the liturgist is also a demonstration of his contempt for the city. In the case of Aeschines it is possible to say that whoever joins the enemy in sacrificing performs a symbolic act that points to a political union. In minor instances, the same principles manifest themselves: when Aeschines is said to slander Demosthenes in the court as if he were at a Dionysian procession (18. 11, 122–4),¹² Demosthenes shows that his opponent is unfamiliar with, or rather negligent of, the conventions of society; Midias, going to the Eleusinian mysteries in a carriage drawn by luxurious white horses (21. 158), similarly violates the standards of decency; finally, the irregularity in the celebration of the Heracleia (19. 86) shows how Aeschines has disrupted public life and is an indication of the seriousness of the situation caused by that traitor (again religion occurs in the context of a crisis). So conformity with the community's religious customs documents loyalty to this group.

Aeschines' participation in his mother's rites conveys a further impression of dubiousness through the religious setting: not only is the cult on the brink of what is tolerable, given its existence outside the official cults; it is, moreover, a cult that reveals something about the social standing of its followers. Glaucotea lives on her clients and her young son hangs about in bad company: both are signs of a low, and thus despicable, social stratum and therefore disqualify Aeschines from a political career in the interest of his fellow citizens. When Demosthenes makes him an utterly ridiculous figure depicting him in the midst of the revellers, he disgraces his opponent and deprives him of the respectability of a serious politician.

Thus the instances of religious argumentation in Demosthenes have their particular purpose. It is not the specific elements of religion (gods, pollution etc.) in their various forms that are emphasized, but the embeddedness and

¹² On the identification of these *πομπαί* Harp. s.v. *πομπείας καὶ πομπεύειν*.

interrelation of religion with the with the areas of life that are independent from it. Religion plays a role as part of the public sphere. The point is not that one has to act differently or that the consequences of wrongdoing are different from a non-religious setting. The opposite is the case: whoever impairs the religious realm also affects the political/social community – only it is even more audacious and more revealing not to leave this area demanding the highest awe unharmed.

Although Demosthenes does not isolate and stress the specifically religious aspects of his opponents' deeds, it would be wrong to deny that part of the audience would concentrate on them. Whoever hears that Midias has thwarted the orderly conduct of the Dionysia may be worried about the orderly progress of the religious festival and the city's relation to the gods. However, that is a matter of individual disposition and priorities. Demosthenes' form of putting his argument allows this: he does not make the religious aspect the core of it, but exploits it as circumstance of the act. He thus provides listeners inclined to paying attention to religious argumentation starting-points which can make them find fault with his opponents' status concerning religion; he himself need not spell out the implications and the underlying religious ideas but leaves it to the relevant part of the audience to think the argument through and let themselves be convinced by it. This handling of religious 'material' distinguishes Demosthenes from the other orators whose speeches have been analysed and even from those speakers for whom he composed speeches. He does not exploit religion in a different way but dispenses with some possible ways of exploitation. Only once, in the intervention of the gods in *On the False Embassy*, does his argument rest on religion alone and is understandable only if the underlying religious belief is accepted. Even there the gods are not said to have done anything, but Demosthenes only sees a sign of divine goodwill, thus drawing on one of the stock motifs. The *τύχη* issue in *On the Crown* shows most clearly how Demosthenes eschews blunt argumentation that relies on religion as such. The topic was forced on him by Aeschines and probably by hostile propaganda in general, and he would have reduced his chances of winning the trial if he had not found an answer to it. Demosthenes turns Aeschines' (in a narrower sense) religious arguments into something remote from divine intervention or at least into something ambiguous. For a long time he avoids speaking of *τύχη* as a deity. And even where one could interpret his words as pointing to the 'theological' sense of fate, he remains so vague that such an interpretation is not essential to the meaning.

The other orators do not show the same tendency to avoid 'purely' religious argumentation. They use the impact of religion and religious guilt on social life. Exclusion from rituals can be presented as a consequence of impiety and/or pollution, but it is also a sign of the loss of citizenship or simply of deviant behaviour. Thus they do not miss the opportunity to attack their opponents on these grounds. They are not one-sided in the way they link religion with other aspects. It rather seems that they use the full range of possible exploitation,

whereas Demosthenes confines himself to its social connotations and at most gives his audience a starting-point for further associations.

What we learn from the analysis of these speeches is that orators did not just avail themselves of a stock of beliefs and established motifs. Aeschines and Lycurgus show that it was possible to rely heavily on religion as such without using the motifs indiscriminately: the one prefers motifs dealing with pollution, the other leaves them unused and allows the gods much more prominence. Demosthenes, by contrast, demonstrates that it was not automatic to draw on religion in a way that exploits its specific character. So it is not just immediate convenience that decides the choice of religious arguments. The subject-matter may have consequences for the motifs the speaker picks for presentation (*Against Midias* would certainly look different, if the Dionysia were a different sort of event), but the argumentation is definitely not determined by the circumstances: Lysias' speech about the alleged disappearance of a sacred olive stump (*Or.* 7) is as dry and free from religious ideas as a speech can be.

One more thing becomes clear when we consider the two groups of Demosthenes' speeches: there is a considerable gap between the speeches he writes for himself and those he will not be associated with in public. The former show the economical, cautious use of religion described above, while in the latter no clear pattern is visible apart from the obvious, near-exact parallels of the two speeches written for Diodorus. This leads to two conclusions: first, the 'individual style' in religious argumentation depends on the speaker, not on the author. It is part of the *ῥητοποιία*, and Demosthenes adapts the argumentation to his client. Second, Demosthenes does not necessarily write what he finds credible himself (whatever that is). He is able, in fact he may be forced when writing for others, to use a sort of argumentation he is not willing to present to the Athenians in person. So we must not believe any of his arguments in the speeches for Euthycles and Diodorus to reflect his own thoughts – and should be very careful about the motifs used in the other speeches.

Nevertheless, in speeches delivered by the same person the religious argumentation is homogeneous to a considerable degree. Lycurgus seems to have put forward similar arguments in a number of speeches. The relationship between the city and the gods occurs so often in the fragments that it looks like a leitmotif of his oratorical/political career. The same is true for Aeschines, whilst in Demosthenes the recurrent feature is the caution with which he avoids giving religious elements a self-contained role in his argumentation. The fact that all three orators show a considerable degree of consistency in their use of religion suggests that there was some kind of compulsion to do so. The speeches considered cover a timespan of twenty years, which is too far apart to be caused by the audience's memory of the earlier occasion. Rather, both the explanation and the effect of the consistent argumentation is the speaker's ethos, the way he portrays himself to his audience.

Aristotle says that persuasion through ethos should result from the speech, not from a previous opinion on what type of person the speaker is. That means political actions and offices should not count.¹³ A different concept is presented in Cicero's *De Oratore*, where the interlocutor, the practitioner Antonius, recommends to orators to draw freely on the knowledge the audience already has about their character and life. The authority acquired by one's dignity, deeds, and appreciation must be exploited to win the audience's benevolence. So we may infer that it is necessary for an orator to live up to the expectations and preconceptions the listeners already have before the speaker mounts the rostrum.¹⁴ It is clear from several passages in Athenian speeches and from the allegations against Demosthenes in the context of the Aristarchus affair that the practice of Athenian political oratory was closer to Cicero's model. In private speeches of nameless individuals, *ῥηθοποιία* for a single occasion might have been possible and even required. However, the foremost orators/politicians were well known to their audience, and it is clear that the Athenians were not completely unprejudiced about their achievements and personalities.¹⁵ As a consequence, orators may have been inconsistent across speeches or even within the same speech,¹⁶ but they could not change their patterns of argumentation at random and *ῥηθοποιία* was limited to adaptations of the *persona* they usually assumed to particular temporary circumstances. As politicians, they had to try to show consistency in their attitudes, even if opportunism could not always be avoided. In analogy, one's position as concerns religion may to a considerable degree have

¹³ *Rh.* 1. 2, 1356^a8–10. Wisse (1989), 35–6 wishes to restrict this statement to what he calls the 'technical *pistis* ethos' (36). If that is correct, Aristotle's remarks are reconcilable with the view of oratorical ethos presented here. Kennedy (1991), 38 n. 43 notes that Aristotle's silence on this matter is probably due to the fact that not famous advocates but the litigants themselves, who were 'often lacking in external authority,' pleaded the cases. Thus the application of the *Rhetoric* is restricted to private speeches.

¹⁴ *De Or.* 2. 182; on the difference between Aristotle and Cicero cf. Wisse (1989), 245–6, who attributes it to the change of interest from theory to rhetorical practice. Wisse also mentions in passing that the importance of one's pre-existing ethos and social authority, as he calls it, can already be perceived in Athens albeit to a lesser degree than in Rome (245): 'Even [!] in Greek trials and assemblies, however, the authority of a speaker could do much to turn the scales: one need only think of Demosthenes' political speeches.'

¹⁵ There may have been various influences on a politician's image. For a long-term image based on one's political activity cf. e.g. Aeschin. 3. 60 εἴ τινας ὑμῶν ἐκ τῶν ἐμπροσθεν χρόνων ἤκουσαν οἰκοθεν τοιαύτην ἔχοντες τὴν δόξαν ὥς ἄρα ὁ Δημοσθένης οὐδὲν πώποτε εἴρηκεν ὑπὲρ Φιλίππου συστάς μετὰ Φιλοκράτους and Aeschin. 2. 145, Dem. 18. 62, 136, 266, *Pr.* 36. 1 (also Timocles *PCG* 12). The murder of Aristarchus (and thus gossip) may have had serious effects on Demosthenes' reputation only for a couple of years, even though it was still familiar to the Athenians in 330. There existed a kind of 'public' perception even of a relatively minor figure like Aristomedes, cf. Hajdú (2002), 428.

¹⁶ When it suits him, Aeschines can state that not gods or Poinai drive people to be ruthless and to damage their fellow citizens but pure lust (1. 190–1). What he says about Demosthenes' *δαίμων* sounds very different. In *On the False Embassy* he mentions the one Tyche that controls everything (2. 131). However, in *Against Ctesiphon* Demosthenes gets his private Tyche (3. 157). Demosthenes claims that good things came about because of him despite adverse *τύχη*, even though he too says in the same paragraph that she rules everything.

been determined by the use one had previously made of it.¹⁷ Basing one's accusations on sacrilege and pollution may not have been promising if one had disregarded these types of argument when presenting oneself to an audience partly consisting of the same jurors.

How one decided which 'religious stance' to take is not clear. For Lycurgus with his family background it may have been the natural choice, and the audience may easily have accepted his claim to religious authority. Whether Aeschines chose to add pollution to his favourite arguments because of his mother's profession or rather to conceal his unrespectable upbringing by the solemn mask of religion is not ultimately clear. For Demosthenes, too, it is impossible to say what induced him to apply religious arguments so economically: whether it was a deliberate choice or simply a complete lack of the necessary authority. The self-presentation of the opponent might play a role: thus he could give religion a bit more importance in the case against Midias than in the trials against Aeschines, when he tried to keep religion out of the debate as far as possible. On the whole, however, one may assume that he preferred presenting himself as a pragmatic politician rather than as a preacher, but this remains speculation. What can be said is that his style of argumentation goes well with the relatively low number of religious 'offices' he held. The priestly functions in connection with his term as a member of the council (Dem. 21. 114–15)¹⁸ are all we hear on his religious offices in Athens. In 323 Dinarchus can say that Demosthenes had been abroad only twice: once after the battle of Chaeroneia and once as a *θέωπος*, a delegate to the Olympic festival of 324. The latter was a mission that focused very much on political questions: according to Dinarchus (1. 81), the purpose of this trip was to meet Nicanor (who was to proclaim a decree on the return of exiles to the Greek cities). In the subsequent discussion about the deification of Alexander, Demosthenes seems to have brought forward political rather than religious arguments.¹⁹ Even though the statement about the number of Demosthenes' journeys is obviously wrong, it shows that his public image was not that of someone going on many a sacred mission.²⁰

¹⁷ Aeschines' attacks on Demosthenes as a polluted menace are similar in 343 and in 330, even though the offence by which he 'contracts' pollution is different. This continuity makes it unlikely that there was a significant shift towards increasing accusation of religious misdemeanour in the Athenian courts after Chaeroneia (as suggested by Mari 2003, 86). The fact that we do not hear about 'polluted' politicians before the 340s may be due to the fact that we do not have more texts from orators like Aeschines.

¹⁸ Demosthenes went to the Nemean Games as *ἀρχιθέωπος*. He also performed several rites on behalf of the council and was *ἱεροποιός* of the Solemn Goddesses, probably around the same time (Dem. 21. 114–15; this means that he must have held these offices between the murder of Nicodemus and the composition of the speech). The latter office was probably reserved to the most prominent public figures, cf. Parker (1996), 298 with n. 41 (if he was not chosen by lot to it, cf. Schol. Dem. 21. 407, Phot. *Lex.* s.v. *ἱεροποιοί*).

¹⁹ Hyp. 1. xxxi ἐν τῷ δήμῳ συγχωρῶν Ἀλεξάνδρῳ καὶ τοῦ Διὸς καὶ τοῦ Ποσειδῶνος εἶ[ναι εἰ βούλ]οιτο. The restoration εἰ βούλ]οιτο and the sarcastic 'and Poseidon' do not make the impression of serious indignation on grounds of religious scruples on Demosthenes' part, cf. Whitehead (2000), 456; on the debate in general Worthington (1992), 60–1.

²⁰ Cf. n. 18. We hear of no religious functions between 347/6 and 324.

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PART II

DELIBERATIVE AND PRIVATE SPEECHES

THE second, shorter, part of this study unites two groups of speeches each of which shares some features with those considered so far. These shared features are, however, opposites: the deliberative speeches deal with political subjects but are not forensic, while the private speeches were written for trials but have different subject-matters. Looking at the two types of oratory will help further to clarify and illustrate the importance of religion in the political trials. For the density and the weight of religious arguments in them differ to a considerable degree from those in the speeches considered in Part I. The two inhomogeneous groups can be coupled together because in both the conventions regarding the employment of religious arguments seem much stricter. Religion occurs probably for different reasons with far lower frequency than in the political trials and is, at least in practice, for the most part restricted to certain contexts. So the aim of this part is to show how much the employment of religious arguments depends on factors that are unrelated to the speaker, in particular the subject-matter and the kind of trial. The cause of variations here seems to lie more in the external conditions in which a speech was delivered than in the difference between the individual speakers.

For both groups it will be necessary to draw on a greater pool of texts than in Part I, where Demosthenes was at the centre of our attention. In the case of the deliberative speeches this is because our evidence is meagre. The only extant texts are those of the *Corpus Demosthenicum*. Not all of them were written by Demosthenes, but the picture of them would be one-sided, and the danger is that we could take characteristics of Demosthenes for those of the genre (or the other way round). In the works of other orators we find only scattered remarks, such as paraphrases or short quotes. So it is necessary to adduce other sources of information and search for texts that might represent the practice of which so little survived on the direct way. These are mainly the works of historians and Aristophanes, who in a few of his comedies parodies Athenian assemblies. However, neither comedy nor history may reflect real life practice entirely accurately.

The problem with the private speeches is, by contrast, that they are too diverse. A Demosthenic speech in an inheritance trial may be closer to a speech on similar issues by Isaeus than to one of his own on a different matter. So looking only at Demosthenes one would end up with too many uncertain parameters. Moreover, considering the result of Part I, it looks unpromising to try to go into details: for rarely is the speaker more than a mere name to us, if we know it at all, and few speeches can be attributed to the same speaker. So what appeared to be the decisive factor in the public speeches cannot really be taken into account in the case of the private speeches for lack of relevant data. Often it is not even certain who *wrote* a particular speech. For these reasons all private speeches will be given equal consideration, regardless under whose name they have been transmitted.

So in the following chapters our aim must be to find general patterns and conventions, not individual styles or techniques. The modesty that consists in asking only what one was allowed or supposed to say that concerned religion is more appropriate than the question of how the speeches distinguish themselves from each other. As we shall see, the evidence would not allow much more than that, anyway.

Demosthenes' Assembly Speeches

If we take legislation to be the appropriate setting for debate on a society's norms and their foundation on principles of a higher order, we might expect to find the gods and their will being invoked as justification for proposals or their rejection. However, in Athens the case is not as simple as sometimes in modern states. The gods are envisaged as normally abstaining from imposing norms of behaviour and giving commandments. The exception to this rule is in man's conduct towards them. Our evidence makes it reasonably sure that discussion of issues of cults and the worship of the gods was held separately from that on 'profane' ones and took precedence over them.¹ Therefore, when speaking about the evidence for religious argumentation in the assembly, it is necessary to distinguish decisions on matters in which the gods took an immediate interest from those in which it depended rather more on the participants whether or not a connection with the gods was drawn. Our evidence suggests that the formation of opinion differed in these cases.

The gods' own will was an important, if not the decisive, factor in debates on cult: priests, exegetes, and the people who collected and issued oracular responses (the *χρησμολόγοι*) acted as experts and advised the people on how to decide. In the end, the resolution was often confirmed or details laid down by one of the great pan-Hellenic oracles. However, the experts were no more than advisers: for the motions it was of no importance whether they were put forward by politicians or by ordinary citizens. The decision was made by the people and only then sometimes passed on to the god himself. Lycurgus is exceptional in combining the functions of priest and proposer of laws, especially as he went outside the realm of his own priesthood.²

¹ Cf. Aeschin. 1. 23. Religious matters as a subject of political debate: *Rh. Al.* 2. 3 12, 1423^a30 1424^a8.

² Cf. Garland (1990), 78, Parker (2005*b*), 91 3. Consultation of a priest *IG* i³. 78, ii². 47; acceptance or decision by oracles e.g. *IG* ii². 204, 1283. In these cases it seems unlikely that an oracle was discussed again, rather than that the instruction given there was just carried out. On Lycurgus cf. Ch. 5; as proposer of decrees: *IG* ii². 333, 337. Another instance of religious personnel proposing decrees is Diopithes (Plut. *Per.* 32. 2; a *χρησμολόγος* who was perhaps also active as a politician, cf. *IG* i³. 61). By contrast, Hyperbolus (*IG* i³. 82, if the restoration is correct; he was probably a member of the *βουλή* in that year) and Aristonicus (*GHI* 81) probably spoke as established orators. On priests not advising on cults other than those administered by themselves cf. Parker (2005*b*), 93 4.

Beyond the limited range of cult matters, the role and importance of religion is much harder to pin down. Even though the evidence is richer for political issues, the way in which it has been transmitted does not allow a completely uniform picture. What is unquestionable is that all parts of debates (including matters unrelated to cults) took place in a sacred setting, introduced by sacrifices and prayers.³ Other than that, many of the fragments that have been transmitted in speeches or historical accounts cannot be certainly assigned to debates or easily interpreted. The big difference, though, from the religious issues is that we do actually possess speeches that originate (or pretend to originate) from such debates. However, almost all extant assembly speeches were written by Demosthenes himself.⁴ So the difficulty is to distinguish between his personal style and strategy and the generic character of Athenian deliberative oratory. On the one hand, restricting oneself to Demosthenes' speeches creates the danger of a vicious circle, in which an individual's style is used to extrapolate the laws of the genre, only then to find that he is in conformity with these laws. On the other hand, the two contemporary speeches by different authors do not suffice as a significant basis for comparison.⁵ The way out of this difficulty may be provided by additional speeches set in a similar surrounding: Aristophanes, Thucydides, and Xenophon pretend to reproduce speeches before the Athenian assembly and before Greek audiences in assemblies of the army of the Ten Thousand. These speeches allow us to compare them with Demosthenes' and other speeches in their works so that both the characteristics of deliberative oratory and possibly the individuality of speakers can become apparent. If a coherent picture emerges, it will be possible to accept it as representing Athenian reality, even if it seems at first precarious to derive information from different genres and an author as idiosyncratic⁶ as Thucydides.

One of the best-known features of Thucydides' history is rationalism in the explanation of historical events. In contrast to Herodotus, Thucydides does not refer to the gods as agents in the course of the Peloponnesian War.⁷ When he mentions oracles, he does so with a good deal of scorn about the people's willingness to make prophecies fit their present situation.⁸ Often he deliberately

³ Aeschin. 1. 23, Ar. *Ach.* 43 4.

⁴ Dem. 7 probably by Hegesippus, Dem. 17 by some anonymous speaker (but generally regarded as a 4th-c. speech; on the date cf. Will 1982). Other deliberative speeches are either spurious (Andoc. 3, cf. Harris 2000b) or pamphlets rather than speeches written for delivery (Lys. 34, cf. Hansen 1984, 64). The use of Isocrates' speeches is even less advisable considering the importance of piety in his philosophy, which is reflected in some of the fake assembly speeches, e.g. 8. 33 4, cf. Bearzot (1981), 97 114.

⁵ First, two is too small a number to confirm that assembly speeches always looked like Demosthenes', secondly, the speeches were accepted as Demosthenes' by the compiler of the *Corpus Demosthenicum*, which means similarity may have been a criterion for transmission.

⁶ Cf. Heath (1990), Hornblower (1992).

⁷ Cf. Connor (1984), 161.

⁸ e.g. 2. 54. 3, cf. Marinatos (1981), 49.

plays down the role of religion in the actions of men.⁹ Yet, in the speeches he puts into his historical figures' mouths, the gods may sometimes make up a considerable part of the argument. The speeches most heavily relying on religious arguments are the defence of the Plataeans (respect of the ancestors' tombs and the temples they defended), some of the speeches in Sparta before the start of the war (to tolerate the maltreatment of allies is injustice towards the gods of the oaths; the gods will be on one's own side), and Nicias' last exhortation before the decampment from Syracuse (the gods will have mercy with the Athenians).¹⁰ However, religious ideas are hardly ever mentioned when Thucydides is 'reproducing' an Athenian assembly speech. Nicias, who speaks to his troops about the gods' help and is depicted as the embodiment of superstition by Thucydides, does not mention the gods' envy, oracles to be consulted or sacrifices to be made for the expedition in the debate in Book 6. The closest an Athenian gets to a reference to the divine sphere before the ἐκκλησία is Pericles (2. 64. 2):

φέρειν δὲ χρὴ τὰ τε δαιμόνια ἀναγκάως τὰ τε ἀπὸ τῶν πολεμίων ἀνδρείως ταῦτα γὰρ ἐν ἔθει τῇδε τῇ πόλει πρότερόν τε ἦν νῦν τε μὴ ἐν ὑμῖν κωλυθῆ.

But the right course is to bear with resignation what is sent from the gods and with fortitude what comes from the enemy; for such has been the practice of this city in the past, and let it find not impediment in yourselves now.

Even though one has to be careful not to overestimate the accuracy in Thucydides' reproduction of assembly speeches,¹¹ his differentiation between Athenian political speeches and others (speeches in Sparta, exhortations, or the 'forensic' speeches in Plataea) might suggest that such references did not occur in Athenian assembly speeches. Their absence would thus not be due to Thucydides' reluctance to give the gods' realm prominence in his work. It would reflect typical Athenian practice in political debates. In the two assembly speeches by orators other than Demosthenes, we find the same near-complete absence of religious references.¹² The women's debate in Aristophanes' *Ecclesiazusae* (and, as far as it is relevant, the debate in the *Acharnians*) is in agreement with this picture. One of the speeches there starts with a prayer, which seems possible but not obligatory,¹³

⁹ Cf. Hornblower (1992).

¹⁰ In particular 1. 71. 5 6, 86. 5, 123. 2, 3. 58. 4 5, 7. 77. 4; cf. Hornblower (1992), 169: the speeches 'admittedly go some way to redress the general imbalance', i.e. the lack of religion in Thucydides' narrative.

¹¹ Cf. Heath (1990), 394 6, who argues that Thucydides deliberately left out argumentation based on justice. Friedrichs (2000), esp. 105 6 modifies Heath's theory: at least in relation to Pericles' speeches one can say, 'Das Bedürfnis, Athen wenigstens vor den eigenen Bürgern zu rechtfertigen, ist nicht zu übersehen.' (32), and amorality in foreign policy does not exclude solidarity and loyalty within the city (37).

¹² There is an *amplificatio* in Dem. 7. 40 using the inscription on an altar. In the same speech there is mention of oaths broken by Philip (§10). The *topos* is used several times in Dem. 17. The speaker refers to oaths and treaties, but does so indiscriminately. So the technical meaning of ὅρκος far exceeds the religious connotations, except for one passage, where the idea of perjury is mentioned, but nobody is directly accused of it (§12, on oaths and perjury cf. below, p. 225).

¹³ *Ecc.* 171 2; the accuracy of Praxagoras' speech is emphasized in 242 4; cf. *Ach.* 43 173 and Wankel (1976), 106. For some parallels between the political debate and comedy cf. Heath (1997).

but otherwise the debate does not contain anything of religious significance. The Platonic Euthyphro complains about how easily religious argumentation can be ridiculed: when he addresses the people and speaks about τὰ θεῖα, he says, they laugh him down like a freak. So Thucydides seems to represent Athenian practice accurately. If the idea of what may be called a distinct religion-free political discourse in assembly speeches were true, it would also help to explain why we find nothing in Aristotle's *Rhetoric* about religious devices in argumentation or the like. As main lines of argumentation in the assembly speech we find expedience, justice, but not for example piety.¹⁴

On the other hand, Xenophon, writing in the generation after Thucydides, has the reputation of being as prone to include references to gods and cult activity as his predecessor was to exclude them. In his historical works he presents speeches which contain (at times quite strong) religious argumentation. In his narrative of the Arginusae trial, for example a trial taking place in the assembly, he has Eurypotemus deliver a speech in which he warns the Athenians not to judge all accused generals together but each one separately. Otherwise, he predicts, the people will find that they are guilty before the gods and themselves (*Hell.* 1. 7. 19). By judging the generals separately they would be acting with proper reverence to the gods and to their oaths (*Hell.* 1. 7. 25). In the *Anabasis*, too, where the assemblies of the Ten Thousand are probably modelled on the Athenian ἐκκλησία,¹⁵ some of the speeches draw heavily on religious beliefs. In a situation similar to that of Demosthenes' *Philippics* the soldiers have to decide whether they want to start war against the Persians. On this occasion Xenophon himself gives a speech after two by Chirisophorus and Cleanor. Whereas Chirisophorus in his short speech just exhorts the Greeks to offer resistance, Cleanor denigrates the king for being a perjurer and godless, and adds his wish that the gods punish him and the Persian commanders Tissaphernes and Ariaeus (*An.* 3. 2. 4–6). Xenophon gives the reasons why the gods will stand on the Greeks' side (*An.* 3. 2. 10):

ἐτύγχανον λέγων ὅτι πολλοὶ καὶ καλὰ ἐλπίδες ἡμῖν εἶεν σωτηρίας. πρῶτον μὲν γὰρ ἡμεῖς μὲν ἐμπεδοῦμεν τοὺς τῶν θεῶν ὅρκους, οἱ δὲ πολέμιοι ἐπιωρκήκασι τε καὶ τὰς σπονδὰς παρὰ τοὺς ὅρκους λελύκασιν. οὕτω δ' ἐχόντων εἰκὸς τοῖς μὲν πολεμίοις ἐναντίους εἶναι τοὺς θεοὺς, ἡμῖν δὲ συμμάχους.

¹⁴ For main arguments cf. Arist. *Rh.* 1. 3, 1358^b21–5, similarly *Rh. Al.* 1. 4, 1421^b24–7; *religiosum* and *pium* are mentioned as relevant categories by Quint. *Inst.* 2. 4. 38, 3. 8. 26, probably drawn from a Greek source. However, cf. Trevett (1996b). Vielberg's suggestion (1995, 50) that the inconspicuous role of religion in ancient rhetorical theory is due to the focus on forensic oratory cannot be true, at least for the Greek side. Likewise Meuss (1892), 229 'man vergleiche damit [with Thucydides's speeches] zb. die staatsreden des Demosthenes, den man doch nicht zu den pietisten zu rechnen veranlassung hat!') apparently fails to distinguish between Athenian (and even Demosthenic) forensic and deliberative oratory.

¹⁵ Lendle (1995), 31; on the army of the Ten Thousand as an independent πόλις cf. Hornblower (2004), 243–5.

I was saying that we have many fair hopes of delivery. For, in the first place, we are standing true to the oaths we took in the name of the gods, while our enemies have perjured themselves and, in violation of their oaths, have broken the truce. This being so, it is fair to assume that the gods are their foes and our allies...

He also reminds the soldiers of the Persian Wars, when vows had helped secure the victory (*An.* 3. 2. 11–13). If Xenophon wrote those speeches in accordance with what he had experienced in the Athenian assembly, we arrive at a picture of how Athenian orators spoke which differs very much from that in Thucydides' history. There is some sporadic evidence from other sources that seems to confirm that argumentation using religion was not entirely alien to the assembly. Though there is surprisingly little on the gods, sacrifices, and the like elsewhere in the *Rhetorica ad Alexandrum*, it instructs its readers that when proposing to start war one should say that the gods will be benevolent and this benevolence is called good luck (εὐτυχία). This argument is treated on the same level as arguments on physical strength, financial resources, and the courage of allies.¹⁶ However, this is the only reference to religious argumentation in the assembly outside the debate on cult regulations in the entirety of that text-book.¹⁷

Another form of exploiting the divine sphere, possibly used to corroborate the former, is provided by Aristophanes in the *Knights*: oracles are mentioned that the 'Paphlagonian' (Cleon) reads out to 'Demos', one of which the latter admits to be his favourite.¹⁸ It is clear that this reference is at least partly to the δῆμος in the technical sense of the people in the assembly. Such statements must be taken as proof that oracles were adduced on political issues. One such oracle even gained official recognition and was inscribed on stone.¹⁹ However, Aristophanes' use of the oracle *topos* also hints at Cleon's idiosyncrasy in this respect. The 'fellow slave' complains (ll. 58–61):

ἡμᾶς δ' ἀπελαύνει κοῦκ ἔῃ τὸν δεσπότην
ἄλλον θεραπεύειν, ἀλλὰ βυρσίνην ἔχων
δειπνούντος ἑστὼς ἀποσοβεῖ τοὺς ῥήτορας.
αἰδεῖ δὲ χρησμούς· ὁ δὲ γέρων σιβυλλιά.

[Cleon] shuts us out and will not allow anyone else to court the master; no, when master is having supper he stands by with a leather swatter and bats away the orators. And he chants oracles; the old man is crazy about sibyls.

This statement makes no sense unless the behaviour is much more characteristic of Cleon than of his opponents. But it also means that the Athenians did pay

¹⁶ Whether or not this is taken from Thucydides, it reflects common practice: *Rh. Al.* 2. 28, 1425^a21–4, in other speeches Thuc. 4. 92. 7, Isoc. 6. 59–60, Dem. 11. 2. On the relation to Thucydides cf. Hornblower (1987), 49–50 (slightly in favour of direct dependence) and Iglesias Zoido (1995), 153 (against).

¹⁷ The precepts on the use of oaths (17. 1–2, 1432^a34–^b4) are appropriate only for forensic speeches.

¹⁸ *Eq.* 999–1095.

¹⁹ *AVI* 53, cf. Parke (1985).

attention to Cleon's oracles. In addition, Thucydides indicates that at the start of the Peloponnesian War the Athenians were particularly prone to admit oracles and portents in their decision-making (though it is unclear whether that happened during debates).²⁰

As to Demosthenes himself, in the trial about the false embassy we hear of religious remarks in assemblies dealing with profane matters.²¹ In Plutarch we have one instance where Demosthenes (before the battle of Chaeroneia) dissuades the Athenians from regarding omens and prophesies. Moreover, Demosthenes urged the Athenians not to consult the Pythia because she was biased in favour of Philip. This story shows Demosthenes acting critically towards oracles, but it also indicates that the Athenians were concerned with portents and the like and discussed these matters in the assembly.²²

This evidence shows that we cannot totally rely on Thucydides and the other evidence presented first, insofar as there is religious argumentation in some speeches.²³ However, a clear pattern has not emerged yet. So in order to see if there is one, it is necessary to turn to the largest body of evidence.

Thirteen of the speeches that have been transmitted under Demosthenes' name were (or pretend to have been) written and destined for delivery in the *ἐκκλησία* by Demosthenes himself.²⁴ Many of the references to gods or to the religious sphere in them are shared with Xenophon, but they vary in their religious significance. In most cases it is hard to be sure if they appeal specifically to the audience's religious feelings. Among these a recurrent phrase is '(the) god(s) willing.'²⁵ It occurs not only in Xenophon's speeches, but also in the texts of other orators and even in Euripides and Aristophanes.²⁶ Thus it was obviously a common, worn-out phrase in colloquial Attic and does not necessarily have more religious weight than the English 'for heaven's sake'.²⁷ Once in Demosthenes the

²⁰ Thuc. 2. 8. 2, 8. 1. 1, Plut. *Nic.* 13. 2; Thuc. 5. 103. 2 may also derive from the author's experience in Athens. On portents during the assembly and their use in arguments cf. Eupolis *PCG* 99. 30. 2. Powell (1979), 19 'The influence of prophets probably rose at times of uncertainty and crisis... It is no doubt more than coincidence that our records of prominent divination at Athens concern especially the critical periods of 480, 431–0 and 415–3.'

²¹ Dem. 19. 19–21, cf. Ch. 2 and Ch. 5, p. 175 with n. 148. But in this case, arguments on recompense for seizing the temple of Delphic Apollo from a speech delivered outside an assembly are repeated. The case of Aeschin. 3. 77 is not quite clear: Demosthenes need not have sworn by Athena in an assembly. On oracles discussed in the *ἐκκλησία* cf. Jacoby (1949), 32.

²² Plut. *Dem.* 20. 1, probably taken from Aeschin. 3. 130. One possible reference is hard to interpret: the invocation *μὰ γῆν, μὰ κῆρας, μὰ ποταμούς, μὰ νάματα* (Plut. *Dem.* 9. 4). Its parody in comedy (Antiphanes *PCG* 288, Timocles *PCG* 41), however, signals that this was more than the Athenians would accept.

²³ For the 5th c. there may be another instance: the quotation of Pericles in Lys. 6. 10 might derive from an assembly speech on the decree of Diopeithes, cf. Schachermeyer (1968), 41. 2.

²⁴ Dem. 1. 6, 8. 10, 13. 16. On the authenticity of Dem. 10 cf. Worthington (1991a), Hajdú (2002), 44–9, of Dem. 13 Trevett (1994). Cf. also the Introduction and above, n. 4.

²⁵ *ἂν θεὸς θέλῃ* or *ἂν οἱ θεοὶ θέλωσι*, e.g. Dem. 2. 20, 4. 7.

²⁶ e.g. Antiph. 1. 20, Xen. *Hell.* 2. 4. 17, Ar. *Pl.* 405, Eur. *El.* 638.

²⁷ Cf. also the Introduction.

phrase follows the habit of mentioning the gods before passing on to the human sphere (2. 20):²⁸

αἱ γὰρ εὐπραξίαι δεινὰ συγκρῖναι τὰ τοιαῦτα ὀνειδῆ εἰ δέ τι παταίσει, τότε ἀκριβῶς αὐτοῦ ταῦτα ἐξετασθήσεται. δοκεῖ δ' ἔμοιγε, ὦ ἄνδρες Ἀθηναῖοι, δείξιν οὐκ εἰς μακράν, ἂν οἱ τε θεοὶ θέλωσι καὶ ὑμεῖς βούλησθε.

Success is apt to cover a multitude of faults. But if [Philip] trips, then we shall know all about his vices. And I wish to show you, men of Athens, that we shall not have to wait long for the exposure, if the gods will and you so resolve.

Demosthenes puts the decisive group, his audience, in the second part of the phrase; the first part is hardly more than a gentle moderation of his claim that he will prove to the audience what he wants to persuade them of. The phrase hints at the unusual character of the following remark, underlining its veracity.

Another conventional, but rather more important reference to religious beliefs is the denigration of enemies as perjured. Demosthenes does not explicitly mention the gods when he accuses, for instance, Philip of having broken his oaths. In the deliberative speeches of the historians, Cleanor, as we have seen, accuses the Great King of having committed perjury; the Corinthian Cliteles bases his argument in the Athenian assembly on the necessity of keeping one's oaths; the Corinthians in Thucydides claim that they and their allies would not act unjustly against the gods they have invoked when making the treaty with Athens.²⁹

In his *Third Philippic* Demosthenes accuses the Macedonian king of a similar offence against the gods (9. 15–16): immediately after the peace between Macedonia and Athens in 346 had been made by taking oaths, Philip occupied Athenian bases in Thrace and on the Chersonese and thus breached provisions of the treaty.³⁰ Against the prospective argument that this was a minor breach, Demosthenes insists: 'religion (τὸ εὐσεβές) and justice, whether a man violates them in a small matter or in a great, have the same importance'.³¹ The passage aims at exposing Philip as perjurer and defiant of religion. It is made clear by reference to the oath of the treaty and to piety that the violation of the treaty does not just have a political impact. Demosthenes deprecates Philip as someone who does not respect the conventions of religion and the code of conduct which is

²⁸ Cf. Mikalson (1983), 15.

²⁹ Xen. *An.* 3. 2. 4 in direct connection with ἀσέβεια, Xen. *Hell.* 6. 5. 37, Thuc. 1. 71. 5. In the forged speech *On the Peace*, too, Ps.-Andocides mentions the importance of oaths (§34). On the accusations against Charidemus cf. above, Ch. 4.

³⁰ Dem. 9. 16 καίτοι ταῦτα πράττων τί ἐποίει; εἰρήνην μὲν γὰρ ὤμωμόκει.

³¹ This remark is odder than it may seem at first sight: only the Stoics will pronounce a similar view (*SVF* i. 224–5). In the common religious thought of the Greeks this was far from self-evident. The different treatment of offences in purification regulations demonstrate this (e.g. *LSS* 115; cf. Parker (1983), 144 on inexpiable guilt) as well as the criticism and mockery of the Stoic principle (Heracl. Tars. in *SVF* iii. p. 258; Cic. *Fin.* 4. 21–2). The sentence is apparently a rhetorical *topos* for the augmentation of 'minor' offences.

valid even in time of war. As he directs his aggression against the Chersonese, 'your claim to which has been recognized by the Great King and all the Greeks', Philip leaves the putative pan-Hellenic consensus. Perjury becomes one in a series of acts, including his misconduct on the merely political plane, by which he manifests himself as an outsider and segregates himself from the Greeks.³²

The charge of being perjured and the like is a favourite allegation of Demosthenes against Philip, used several times in the assembly speeches.³³ But he also employs it against the Persian king and once against the Byzantines.³⁴ In these passages, too, Demosthenes tries to present perjury as an act that distinguishes the accused party from the Greeks or separates them from the rest of the Greeks. The Persian king is even depicted as someone with a reverse (that is perverse) system of values (14. 39):

εἰ μὲν μὴ τοῖς Ἑλλήσιν ὁμοίως αἰσχρὸν ᾗν τὸ ψεύδεσθαι καὶ ἐπιορκεῖν ὥσπερ ἐκείνῳ καλόν...

If falsehood and perjury were not as disgraceful in the eyes of the Greeks as they are respectable in his...

In the *Third Philippic* this is part of a larger strategy. In a different passage Demosthenes further exploits the idea of Philip being alien to the Greek community. He declares his control over the Pythian Games, 'the common festival of the Greeks', as utmost ὕβρις (9. 32). Philip devalues and mars the games by putting one of his 'slaves' (actually a high commissioner) in charge of the games in 342. The sacred games thus symbolize the pan-Hellenic idea of Greece as a group united in common service to the gods. But Philip has intruded into this group and spoilt the games.³⁵ The unity of the (true) Greeks is Demosthenes' main target in this speech, and he shows this by separating Philip from them in terms of their nationality and religious community. The difference the context makes is striking, if we compare the next speech: in the *Fourth Philippic* Demosthenes does not appeal to pan-Hellenic action in the same way or talk about Greek gods or festivals, but about the gods of Athens alone. These gods Philip hates just as much as the Athenian city and soil (10. 11).

Festivals are a topic not exploited in other assembly speeches, but references to such institutions of religious as well as political importance need not have been unusual. The reason for the inclusion in the *Third Philippic* is its emotional effect, to stir up anti-Macedonian sentiments, which a part of the audience may

³² For the connection between antisocial and religiously objectionable behaviour cf. Ch. 1, pp. 31–2. For the social function of oaths in particular cf. Cole (1996).

³³ Dem. 2. 5, 10, 9. 34, 10. 18.

³⁴ Persian king Dem. 14. 39; Byzantines Dem. 15. 26.

³⁵ One can view Philip's access to the festival without permission as a defilement parallel to the breach of the regulations of access at local festivals, Parker (1983), 177–8, cf. the case of Neaera's daughter, Dem. 59. 73. For the importance of religion for the pan-Hellenic festivals see Cartledge (1985), 107–10.

receive better if sacred values are concerned.³⁶ The outrage against the festival together with the arrogant behaviour of the allegedly barbarian intruder is meant to enhance the Athenians' willingness to take action against Philip and the Macedonian expansionist policy. Demosthenes does not immediately draw the conclusion that Philip's disrespectful treatment of the Pythian Games requires retaliation (especially on behalf of the gods). Instead, he goes on with a series of measures by which Philip domineers over Greek states and robs them of their autonomy (9. 33).³⁷ Only then does he openly criticize the Greek states for remaining passive, while praying not to be Philip's next victim. So the tenor of the passage is a political one, of how Philip takes over the control of Greece; the two fields where this happens are the political structure and also the festival.³⁸

The Pythian Games represent the side of the pan-Hellenic community, the rest the sphere of the political unit of the city-state. Demosthenes does not make an independent argument based on the religious character of the festival: he does not draw a conclusion from Philip's influence on the Games. The statement is left standing alone without connection to his appeal to stand up against the Macedonian. However, the argument does have some argumentative value, exceeding that of the 'god willing'-phrase or denigration as a perjurer: the religious argument can develop its force by allusion to popular prejudices, though the specific quality of the festival as a religious event is not essential. Demosthenes appeals to the deep-rooted sentiments of the Athenians – the conclusion, however, is left to them.

In all these passages the target of Demosthenes' attacks was Philip or some other enemy, never Demosthenes' Athenian opponents. Apparently, fierce attacks on Athenians were not admitted in the debate. There is some direct corroborating evidence for that (along with indignation at some breaches of the rule).³⁹ Thus Demosthenes used one passage in a very similar form twice in his assembly

³⁶ Compare the high emotional value attributed to sharing in a festival, for example in Xen. *Hell.* 2. 4. 20 and the exploitation of this potential in *Against Midias*.

³⁷ The more extended version of the speech (including parts of §32) is probably not authentic, cf. Bühler (1978).

³⁸ As Parker (1998*a*), 12 points out, the separation of 'foreigners' (in the various degrees of stranger the Greeks knew) from cults is a political one, not a religious one: they are not debarred from worshipping a god, but from participating in a certain cult. Demosthenes speaks of the *ἀγών*, the musical and gymnastical contests, not of the political frame. Moreover, the Athenians felt they had a strong connection to the Pythian Apollo (cf. Wankel 1976, 770 1). Therefore, I regard the reference as being to the religious institution of the Pythian Games as opposed to the political actions in Thessaly and Porthmus.

³⁹ Cf. Worthington (2003*b*), 367; no invective Dem. *Pr.* 11, 20. 1, 31, 53. 1 2; Aeschin. 1. 35 is probably spurious. As with all conventions, there may have been breaches (e.g. Dem. 4. 44, 22. 61, 51. 9, Andoc. fr. 5, Ar. *Ecl.* 142 and perhaps Thuc. 3. 36. 6 (Cleon as the *βιαιότατος* of the citizens); the accusations of Dem. 18. 285 may have been made in the assembly), but in general the audience will have expected insults not to be used, cf. Hajdú (2002), 426 7 on Dem. 10. 70 4. Strict rules for the assembly are also suggested at Dem. 21. 148, 153. The lack of denigration may have partly to do also with the (near total) absence of narrative in deliberative speeches, cf. Arist. *Rh.* 3. 13, 1414^a37 9.

speeches as well as in his *Against Aristocrates*.⁴⁰ Demosthenes contrasts the famous politicians of the fifth century with his contemporaries. But while he mentions the representatives of Athens' golden age by name, he suppresses those of Eubulus and whomever else he is criticizing. In the most extended version of that passage, in the *Third Olynthiac*, the qualities and achievements of the former group are regularly juxtaposed with mistakes of the latter. Thus instead of masters the Athenians have become isolated and threatened; instead of saving money they spend it on futile projects etc. It seems that religious points were used even more sparingly than other forms of attack, for the summary on the past generations of politicians runs (Dem. 3. 26):

ἐκ δὲ τοῦ τὰ μὲν Ἑλληνικὰ πιστῶς, τὰ δὲ πρὸς τοὺς θεοὺς εὐσεβῶς, τὰ δ' ἐν αὐτοῖς ἴσως διοικεῖν μεγάλην εἰκότως ἐκτήσαντο εὐδαιμονίαν.

By their good faith towards their fellow Greeks, their piety towards the gods and their equality among themselves they deserved and won a great prosperity.

The only quality whose opposite remains unexpressed is the ancestors' εὐσέβεια. Demosthenes' only hint at contemporaries' lack thereof is that the Athenians are 'content if [the politicians] gratify you with a dole from the theoric fund or a procession at the Boedromia' (§31). Thus even though Demosthenes here does take a step towards denigration of internal opponents, he falls short of applying religious terminology to them.

The passages cited so far cover almost every reference to religion. So we are far away from Xenophon's extended demonstrations of the gods' being on one's side. The situation in the *Anabasis* is relatively similar to that of Athens in the 340s (at least as Demosthenes describes it). Like Cyrus' mercenaries after the battle of Cunaxa the Athenians find themselves in a truce with a superior military power. The enemy has broken several sworn agreements and is going to attack sooner or later. This is the situation when Cleanor and Xenophon deliver the speeches that contain the fullest argumentation on divine backing. The *topos* is apparently so common that even Thucydides has the Corinthians and Sthenelaidas use it and the *Rhetorica ad Alexandrum* gives instructions on how to employ it.⁴¹ Thus, if Demosthenes were to undertake to demonstrate that the gods would support resistance against the expansionist policy of Philip, he would be following a strong tradition. However, we cannot find this *topos* in an extended form in the assembly speeches of the time with the remarkable exception of the *First Philippic* and the *First* and *Second Olynthiacs*. Yet in these Demosthenes changes the emphasis of the argument: it is not that the gods will back the Athenians once they have started the war, but the Athenians owe it to the gods to launch the campaign and to defend their city. The starting-point is the same in all three

⁴⁰ Dem. 3. 21 31, 13. 26 31, 23. 204 10.

⁴¹ Thuc. 1. 86. 5, 123. 2 and above p. 223.

speeches: the gods are benevolent towards Athens and have done the citizens good. Therefore, the latter are obliged to fight for the city.

The motif of the gods' goodwill towards Athens and the city's protection by the gods, which we have encountered in several speeches, is among the most often cited of Athenian beliefs.⁴² It can be traced back as far as Solon.⁴³ Further occurrences are from Old Comedy⁴⁴ and from a private inscription of a Chian buried in Athens.⁴⁵

In the proem to the speech *For the Liberty of the Rhodians* (15. 2)⁴⁶ Demosthenes also exploits this *topos*: all he says there is that the Athenians owe gratitude (*χάρις*) to the gods, among other things because they have forced those who wronged Athens outrageously in the recent past now to rely on the city for their own salvation.⁴⁷ The thought is not followed by any further explanation or conclusion. Demosthenes goes on to say that the Athenians should be happy about the opportunity they now have to refute the slanders of their enemies.⁴⁸

The gods may have provided the Athenians with the opportunity to see their old opponents humbled. The chance that emerges from this fact, however, namely to show their own virtue, is no longer said to be an effect of the gods' intervention. Thus the remark on the favour of the gods is not transformed into an appeal nor is it developed in detail, but left as exordial *topos*. Yet it might suffice to trigger the chain of thoughts that leads some Athenians to perceive the necessity of intervening. By contrast, the idea is further developed in three consecutive speeches, at the start of the series of *Philippics*, though not in any later deliberative speech. It takes the form that the city that has received a benefit from the gods is obliged to make the best use of it on its own account.

⁴² Apart from the occurrences already mentioned from Dem. 18, 19 cf. e.g. Dem. 24. 135, *Pr.* 24. 3; Aeschin. 3. 57, 88, 130, 196; Din. 1. 26; Pl. *Menex.* 237 c. Generally cf. Mikalson (1983), 18, Parker (1997), 143–4. This belief or dogma even survived the defeat at Chaeroneia (e.g. Aeschin. 3. 232); the possible end of the gods' benevolence as indicated in Lycurg. 26 is hypothetical.

⁴³ *IE2* 4.

⁴⁴ Ar. *Eq.* 1090–1, 1173–4, *Nub.* 587–8, *Eccl.* 473–5.

⁴⁵ *IG ii2*. 10510 from the 4th c.; the fact that it is a foreigner on whose tombstone Athens is called 'dear to the gods' shows (even though the inscription was put up in Athens) that the city must have been felt to be under divine protection even outside Attica. In Greece we have earlier mentions of *θεοφιλεῖς* cities (cf. Dirlmeier 1935–6, 178), but neither in prose nor in the classical period. Therefore it is not entirely clear whether this was a distinctively Athenian *topos*. The analogous idea occurs in Cicero, *Cat.* 3. 21.

⁴⁶ For the dates of Dem. 4 (350) and 15 (352) cf. Lane Fox (1997), 187–91, 195–9 against Dion. Hal. *Antiq.* 1. 4. The speech on the Rhodians must have preceded the *Philippics*.

⁴⁷ The collection of proems contains possibly a sketch for Dem. 15 (*Pr.* 24). This comprises the same thoughts in slightly different words. Central elements (like the word *χάρις*) are the same. I shall therefore not treat this doublet. The general idea of gods giving an opportunity is nothing extraordinary, cf. the very similar Xen. *Hell.* 6. 5. 41.

⁴⁸ A few years before this speech, from 357 to 355, the Athenians had fought against their allies. These wanted to quit the alliance, perhaps owing to Athens' ambitions of leadership (cf. Dem. 15. 3, 15; Cawkwell 1981, 55 speaks of a 'bid for liberty' from the allies to Persia; against this cause of the war Sealey 1993, 107).

(i) In 349 the Olynthians, who in 352/1 had concluded a peace treaty with the Athenians, were suddenly threatened by their own ally Philip. Thereupon they sent to Athens for a formal alliance. Demosthenes delivered the *First Olynthiac* to back that appeal. In the speech he makes the following statement (Dem. 1. 10):

καὶ ἔμοιγε δοκεῖ τις ἂν, ὃ ἄνδρες Ἀθηναῖοι, δίκαιος λογιστὴς τῶν παρὰ τῶν θεῶν ἡμῖν ὑπηργμένων καταστάς, καίπερ οὐκ ἔχόντων ὡς δεῖ πολλῶν, ὅμως μεγάλην ἂν ἔχειν αὐτοῖς χάριν, εἰκότως τὸ μὲν γὰρ πολλὰ ἀπολωλέκεναι κατὰ τὸν πόλεμον τῆς ἡμετέρας ἀμελείας ἂν τις θεΐη δικαίως, τὸ δὲ μήτε πάλαι τοῦτο πεπονθέναι πεφηνέναι τέ τινα ἡμῖν συμμαχίαν τούτων ἀντίρροπον, ἂν βουλώμεθα χρῆσθαι, τῆς παρ' ἐκείνων εὐνοίας εὐεργέτημ' ἂν ἔγωγε θεΐην.

It seems to me, men of Athens, that if anyone becomes a fair accountant of the blessings we have received of the gods, he will, though much is not as it should be, none the less be highly grateful – and rightly so: for our many losses in the war may be justly imputed to our own supineness; that we did not suffer these losses long ago and that this opportunity of alliance affords us some compensation, if we choose to accept it. This I for my part should put down as a signal instance of the benevolence of the gods.

Demosthenes' aim is to persuade the Athenians to tackle their public finance reforms in favour of the war funds, and to take action against the Macedonians by helping the Olynthians. The problem he faces is that he has to make the Athenians aware that something has to change, but at the same time he has to give them the prospect of future improvements to encourage them to take up new resistance against Philip. The irresponsible behaviour of the Athenians and their losses⁴⁹ are therefore contrasted with the conventional *topos* of the gods' help: by offering the prospect of an alliance with Olynthus the gods have preserved the city from an earlier catastrophe and have provided the city with a new opportunity to regain what it had lost. All this is an expression of the gods' benevolence towards Athens, of which the Athenians were sure anyway.

The following paragraph departs from the usual instances of the motif. It starts with a comparison: people who do not use a political opportunity given by the gods are ungrateful to them, just as someone who has wasted money does not remember the good fortune that had provided it. This is to say that the Athenians now have to seize the opportunity; otherwise they will be ungrateful. For, Demosthenes adds, 'the judgement about what has preceded depends on the outcome.' This is a conclusion of the comparison of the ungrateful Athenians and the person wasting money: the Athenians will not appreciate the gods' help, if they lose as a consequence of inactivity. At the same time, it is the premise for the merely political argumentation that follows: the Athenians have to see to it that they are successful in order to get rid of their bad reputation. Furthermore, if the Athenians do not take action to support the Olynthians, their own city will be captured by Philip (§12).

⁴⁹ Demosthenes means the loss of possessions in the north owing to a lack of commitment, cf. Sealey (1993), 111.

Looking at the whole passage there are two ideas: (a) we have to fight Philip, otherwise our city is doomed and will gain a bad reputation, and (b) we have to thank the gods who have preserved the city;⁵⁰ but if we do not become active ourselves we shall lose the city and then forget to express our gratitude to them. Thus Demosthenes implicitly predicts an offence against the gods. Both ideas converge in the appeal for action that pervades the whole speech. The first is political and does not draw on religious ideas, but the second is based on the goodwill-*topos* with a completely new direction. Instead of gods who will certainly save the city, the Athenians will now have to defend her themselves. Their knowledge of the gods' goodwill is not a reason for being reassured: it is an incentive for their own commitment. Whereas in the instances of the motif in comedy the speakers are just happy about the divine support rather than concerned to return the favours, here the idea of gratitude (*χάρης*) is stressed. The common idea of obligation after a favour is made extraordinary by the way the gratitude towards the gods is to be expressed: the Athenians should 'seize the opportunity' and by this means save their own city. That is to say they should defend Athens not for their own sake, but in order to show themselves thankful to the gods. Demosthenes presents elements known to the Athenians in a most unusual combination. He transforms the general Athenian optimism concerning the gods into a conditional (strongly emphasized) one in order to put an end to the lethargy of the *δῆμος*.

(ii) In the *Second Olynthiac* we find the same motif right at the start and thus in a very prominent position. Demosthenes detects several points in the course of events that are to be interpreted as divine (*θεῖα καὶ δαιμόνια*) favour: new allies, who have power, are situated next to Philip's territories; they despise a peace treaty and have offered themselves to the Athenians. At the end of §2 he says it would be the utmost shame to abandon these allies and the opportunity supplied by *τύχη*. If *τύχη* is thought of here not just as 'chance' but as a goddess,⁵¹ the whole passage is framed by the idea of the gods' benevolence. Demosthenes includes the appeal to avoid the impression that the Athenians do less than the circumstances would allow them to do. He thus again urges them to act, which they are also encouraged to do by the gods' previous favour: it is a duty for every honourable man to use the opportunity the divine graciousness and *τύχη* provide.

In §22 Demosthenes mentions the gods' preference for Athens in a way that must have looked paradoxical to an observer of Philip's rise:

εἰ δέ τις ὑμῶν, ὦ ἄνδρες Ἀθηναῖοι, τὸν Φίλιππον εὐτυχοῦντα ὁρῶν ταύτῃ φοβερὸν προσπολεμῆσαι νομίζει, σῶφρονος μὲν ἀνθρώπου λογισμῷ χρηταί· μεγάλη γὰρ ῥοπή,

⁵⁰ On this idea cf. Parker (1998b).

⁵¹ For *τύχη* and Agathe Tyche as divine cf. Ch. 3 with n. 14 and above, p. 223 on *Rh. Al.* 2. 28, 1425²². Eucken's interpretation (1984, 201) as a 'willkürliche... Macht' in this passage does not consider the gods' consistent pro-Athenian stance.

μᾶλλον δὲ τὸ ὅλον ἢ τύχῃ παρὰ πάντ' ἐστὶ τὰ τῶν ἀνθρώπων πράγματα οὐ μὴν ἀλλ' ἔγωγε, εἴ τις αἰρεσὶν μοι δοίῃ, τὴν τῆς ἡμετέρας πόλεως τύχην ἂν ἐλοίμην, ἐθελόντων ἂ προσήκει ποιεῖν ὑμῶν αὐτῶν καὶ κατὰ μικρόν, ἢ τὴν ἐκείνου πολὺ γὰρ πλείους ἀφορμὰς εἰς τὸ τὴν παρὰ τῶν θεῶν εὐνοίαν ἔχειν ὁρῶ ὑμῖν ἐνούσας ἢ ἐκείνῳ.

But if any of you, men of Athens, seeing Philip's good fortune, thinks that he is therefore a formidable antagonist, he reasons like a prudent man. For fortune (τύχῃ) is indeed a great weight in the scales; I might almost say it is everything in human affairs. All the same, if you gave me the choice, I should prefer the fortune of Athens to Philip's, provided you are willing to do your duty yourselves, even to a limited extent; for I am sure you have far greater assets on which to draw for the gods' benevolence.

Once again the gods' goodwill is only used as a strong contrast to Athens' lethargy. Much more than in the proem Demosthenes emphasizes that it is necessary for the Athenians to act. His allusion to the common belief that one has to be active to gain the gods' benevolence is also more explicit than in the first speech: someone who does not start by helping himself cannot claim that others let alone the gods should help.⁵²

The whole of the rest of the speech concentrates on pragmatic considerations. When Demosthenes makes his proposals to send an expedition, he does not mention the religious duty that is comprised in this action. As in the first speech, religion is not part of the process of formal persuasion. It is an argument in the sense that it can evoke thoughts or feelings that may eventually guide the listener to the conclusion aimed at by the speaker.

(iii) The motif occurs not only in these two speeches, which were probably delivered within a short period, but also in the *First Philippic*.⁵³ In a side blow (4. 12) Demosthenes says that even if τύχῃ, who is always good to the Athenians, were to let Philip die, the Athenians would not be able to exploit the situation owing to their lack of preparation and willingness. That proposition contains nothing new. More interesting is what Demosthenes asserts in §42 (after an elaboration on fleets and funds):

δοκεῖ δέ μοι θεῶν τις, ὧ ἄνδρες Ἀθηναῖοι, τοῖς γιγνομένοις ὑπὲρ τῆς πόλεως αἰσχυρόμενος τὴν φιλοπραγμοσύνην ταύτην ἐμβαλεῖν Φιλίππῳ. εἰ γὰρ ἔχων ἂ κατέστραπται καὶ προεὶλήφεν ἡσυχίαν ἔχειν ἥθελε καὶ μηδὲν ἔπραττεν ἔτι, ἀποχρῆν ἐνίοις ὑμῶν ἂν μοι δοκεῖ, ἐξ ὧν αἰσχύνην καὶ ἀνανδρίαν καὶ πάντα τὰ αἰσχιστα ὠφληκότες ἂν ἤμην δημοσίᾳ νῦν δ' ἐπιχειρῶν ἀεὶ τι καὶ τοῦ πλείονος ὀρεγόμενος ἴσως ἂν ἐκκαλέσαιθ' ὑμᾶς, εἴπερ μὴ παντάπασιν ἀπεργνώκατε.

⁵² For examples cf. Otto (1890), 111 and, in addition, Xenophon (*Mem.* 2. 1. 20 Hes. *Op.* 287 92 and Epicharmus *PCG* 271).

⁵³ As it is assumed that at least the first two *Olynthiacs* were delivered before the first expedition against Philip in 349 (Karvounis 2002, 301), they must be relatively close to each other. If indeed the date of the first expedition was Boedromion 349 (Cawkwell 1962, 130) following immediately after the assemblies where Demosthenes spoke, it could be less than a year from the *First Philippic* in autumn 350, cf. Lane Fox (1997), 199.

It seems to me, men of Athens, as if some god, out of very shame for the conduct of our city, had inspired Philip with this restlessness. For if he did nothing more, but were willing to rest satisfied with what he has already captured and subdued, I believe some of you would be quite content – and that would bring the deepest disgrace upon us and brand us as a state of cowards. But by always attempting something new, always grasping at more power, he may possibly rouse even you, if you have not utterly abandoned hope.

So the Athenians will have to react sooner or later. This is an extraordinary and again quite paradoxical thought: that a god helps Athens by letting her enemy grow. The reason is that, if Philip kept quiet and were content with the present size of his domain, the Athenians would themselves stay passive. This would earn them shame and the reproach of being cowardly. But if Philip goes on conquering, the Athenians will be forced to intervene. Thus it is not the city's safety the god aims at, but her reputation. Moreover, Demosthenes does not speak of benevolence that causes the divine activity: he claims that the god is ashamed for the city.⁵⁴ The idea of the special relationship between Athens and the gods is clearly presupposed. The statement, however, that a god is ashamed for mortals and therefore intervenes in human affairs is not paralleled in Demosthenes or anywhere else.⁵⁵ He introduces a concept that does not seem to fit into the normal relation between god and man. The emotional link between them both is carried to an extreme: the gods can favour or love a mortal (or a city), but to identify themselves so much that they are ashamed for the beloved is something new. This relationship, though, is one-sided. The orator presents enormous optimism about Athens' chances against Philip by saying that even his successes are a sign of divine ill-will towards him.

Thus we have found arguments referring to religion with the same tenor as those of Xenophon in his *Anabasis*. Nevertheless, even the early *Philippics* do not have the same concentration of these arguments as the speeches of the historian. One sort of argument is not used at all: Xenophon appeals to his soldiers to make sacrifices in order to secure the gods' goodwill. Appeals comparable to these cannot be found anywhere in Demosthenes: he nowhere proposes sacrifices to improve the chances of a campaign or the successful implementation of a decree; the gods' 'help' is stated as a fact, and responding to it by taking action against Philip is at best described as a moral obligation (return of *χάρης*), not as a measure to please or placate them. Even that point is only mentioned, but never used in direct connection with the appeal or political aim of the speech; that means Demosthenes himself never draws a direct connection between the gods, their favour, and the need to dispatch a fleet. Elements of popular

⁵⁴ The usage of *αἰσχύνομαι* with *ὑπέρ* + gen. in this sense is paralleled in Lys. 14. 39.

⁵⁵ In Eur. *Hipp.* 1331 4 (the closest parallel) Artemis is not ashamed for Hippolytus, but of being unable to save him.

religiosity like this *topos* may have been felt to be (in principle) inappropriate for the political debate, where arguments based purely on matters of fact should prevail, without any consideration of the elusive help of the gods.⁵⁶

A different question is why the benevolence of the gods comes into play in only three speeches, delivered within a short period of time. A clue might be given by the comparison with Xenophon and Thucydides: if we look at their historical works we see that religious argumentation can mostly be found in speeches delivered in crises. At these moments it is necessary to take action. First of all, it is the threat of Artaxerxes' army that endangers the Ten Thousand. They have to decide whether to surrender or to fight their way home. Later in the *Anabasis*, Xenophon tells the assembly about his consultations of oracles and soothsayers when the Greeks debate founding a city or electing their leader.⁵⁷ Both are vitally important decisions. A threatening situation occurs again when the Arcadians are under attack. Xenophon persuades the rest of the army to intervene in the interest of their own safety telling them they are perhaps being led by a god to castigate the proud.⁵⁸ In the majority of speeches, for example when the Greeks discuss their tactics or the question whether to go on by ship or on land,⁵⁹ these arguments are not advanced. In Thucydides it is in the debate on starting the Peloponnesian War and in the Plataeans' plea for 'acquittal' that speakers refer to the gods or religious concepts in deliberative speeches. At the same time the Athenians are particularly receptive to oracles.

Going back to Demosthenes we find that he applies the motif of the gods' support in those speeches which occur at the beginning of his confrontation with Philip. They are delivered some time after Philip has become an acute danger for Athens: after nearly five years of waging war about Amphipolis without commitment on the Athenian side, Philip had besieged Heraeon Teichos, close to the Athenian bases on the Chersonese, in 351. This led to hectic activity in Athens. Yet after a while the citizens calmed down owing to Philip's illness and became as indifferent as before.⁶⁰ Demosthenes in the *First Philippic* therefore mounts the rostrum in a kind of *coup de théâtre* (§1) and calls their attention to the constant threat in the north. When he sees a chance to win an ally in 349, again, he urges the Athenians to seize the opportunity, while they tend to remain lethargic.⁶¹

⁵⁶ Cf. Murray (1990*a*), 16–17. It is hard to draw a clear distinction between 'rational' arguments and those based on divine influences. For at least the Greeks might not have found the latter 'irrational'. But it remains the case that they did not both have the same force except in particular circumstances: nobody prevents Plato's Euthyphro from speaking, but he is not listened to either (3 B c).

⁵⁷ Xen. *An.* 5. 6. 28–9, 6. 1. 31. This is the type of argument Demosthenes does not apply.

⁵⁸ Ibid. 6. 3. 18. If they do not save the Arcadians, he says, there is no hope of salvation for themselves (§12).

⁵⁹ Ibid. 4. 6. 9–19, 5. 1. 2–13.

⁶⁰ Dem. 3. 4–5, Sealey (1993), 124–5. On the dating of the siege of Heraeon Teichos cf. Lane Fox (1997), 196.

⁶¹ There is no indication in any of the *Olynthiacs* that an expedition has been dispatched, cf. n. 53. We might therefore assume that they were all delivered before the decision to send the first troops.

So when Demosthenes needs to arouse attention for a new approach to a topic that had been on the agenda for many years, he chooses a tone different from that of his earlier speeches,⁶² including a remodelling of a familiar argument. He draws on a type of argumentation that is presumably more common in times of immediate danger in order to suggest the urgency of his appeal and in order to make himself heard.⁶³ Moreover, he changes it so as to surprise and stress the urgency of his appeals. In places, he all but speaks out the warning not to test the gods' goodwill too much. This most conspicuous reference to the gods thus serves to create a certain atmosphere: Demosthenes alerts the Athenians, but also shows that there are prospects of winning the war and that it is worth taking action.

Demosthenes' call for attention might also be seen as a tactic in his struggle to win the standing of an approved and independent public speaker.⁶⁴ But even without this assumption we see that Demosthenes aims at an unconventional effect. There seems to be a distinct discourse including a range of arguments expected in a 'normal' debate when the salvation of the πόλις is not at stake. This range does not include extensive references to the gods. Demosthenes transgresses the borders of this discourse for a short period. In the speeches delivered after this period, he returns more or less to what seems to be the standard way of arguing. What remains is the denigration of the enemy abroad in religious terms. Compared to some of the abuse in the forensic speeches, however, this is still relatively mild and does not stretch to opponents within Athens.⁶⁵

⁶² Karvounis (2002), 235, Pearson (1976), 23–4; with a different emphasis Pearson (1964), 100–1.

⁶³ In one of his early speeches (14. 25) Demosthenes envisages orators and χρησμολόγοι addressing the Athenians. But it is expressly to scare (φοβεῖν) the Athenians with the prospect of war that the religious 'experts' speak on a matter of politics. On a similar *topos*, the reminder of divine omniscience, Versnel (2002), 43 suggests that gnomic expressions 'remain available to be put into action at moments of real urgency or desperation'.

⁶⁴ Cf. the Introduction to Part I.

⁶⁵ On the few exceptions, i.e. passages with (non-religious) abuse cf. n. 39.

Against Leptines (Or. 20)

THE treatment of the speech *Against Leptines* in connection with the deliberative speeches may at first glance call for justification. The speech was not delivered before the assembly, and it was followed by a decision for or against an objection against a law, based on its unconstitutionality. Moreover, that decision was passed by a board addressed as *δικασταί*, and the whole procedure had apparently been launched as a trial about the unsuitability of the law (*γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι*). Thus it looks like an essentially forensic situation. However, I aim to show that many elements of the setting bring it closer to a legislative procedure than a trial so that it approximates a deliberative situation. As far as religious argumentation is concerned, it will turn out that the plea against Leptines' law resembles the deliberative speeches in that it is employed very sparingly and not for direct attacks on the opposite side.

Even though it does not seem to have been one of the great political battles between the big names of Athenian politics, the trial against Leptines' law or rather Demosthenes' speech is of some prominence. In modern times, the reason is mainly that this is supposed to be the first speech Demosthenes delivered in person in a public affair.¹ In antiquity the speech was highly esteemed for its stylistic qualities. Cicero makes it his example of the *genus subtile*, contrasting it with the speeches against Aeschines.² Indeed, it differs from the other political speeches by its exceptional serenity.³ Most conspicuously, it lacks aggressive passages directed against Leptines and his supporting speakers (*σύνδικοι*). Many interpreters see the cause of this in the fact that Leptines could no longer be held responsible for the law he had proposed: the period of liability had lapsed, presumably after one year. So, it is not the defendant who is accused in this trial, as in the six (or seven) speeches of Demosthenes considered in Part I, but the law itself.⁴

¹ Following Dion. Hal. *Amm.* 1. 4: Schaefer (1885–7), i. 410. Blass (1887–98), iii/1. 265–6 calls attention to the uncertainty of the speaker's identity.

² Cic. *Orat.* 111; cf. Dion. Hal. *Dem.* 45.

³ Cf. Carlier (1990), 77.

⁴ Period of liability: Dem. 20. 144 and *Arg.* 2. 3, Dem. 23. 92; as reason for the style of the speech Schaefer (1885–7), i. 411, Rubinstein (2000), 139 n. 41 'The action against Leptines' law was, of course, singularly unsuitable as an instrument in a political feud, since Leptines himself was no longer personally at risk.' This insight, however, does not prevent her from assuming personal enmities and alliances as the cause of this case. 'Prosecution' of the law: Dem. 20. 67, cf. Wolff (1970), 34–5.

The cause of the differences between this and the other trials may lie deeper than this. Leptines' not being liable to punishment is not the cause of these differences. Instead, the lack of personal attack and abuse is due to the character and the content of the debate. No personal reasons are given for the prosecution, and the main purpose of the suit is not to confer dishonour on the political opponent, but to avoid the effect Leptines' law would have.⁵ The trial even seems to be something in between a court case and a legislative procedure. The sort of religious argumentation used and its sparseness can be explained from this rational and political, rather than emotional and aggressive, character of the speech.

The fact that Leptines himself cannot be convicted and punished for proposing the law is not a sufficient explanation for the 'peaceful' style of the speech. Many speeches contain insults against people who are not on trial themselves, but merely supporting speakers or otherwise related to the case. The most famous example is of course Demosthenes in the case against Ctesiphon on the crown. The verdict is on his policy, so that is what Aeschines concentrates on in his argumentation: little is said about Ctesiphon's allegedly illegal proposal and the target of almost all accusations is Demosthenes, but if the jury had decided in favour of Aeschines, Ctesiphon alone would have had to face immediate consequences. In his plea *Against Timocrates*, Demosthenes repeats a good deal of the invective of his speech *Against Androtion*, although the latter does not run the risk of being condemned at this trial. These speeches suggest that personal liability is not the decisive criterion of whether one is denigrated in a speech or not. In the majority of speeches, abuse is used against the person whose reputation is at stake, not necessarily against the one whose life or rights are in danger. Even if the issue is only whether the law should be valid or not, a rejection would usually be combined with a loss of reputation on Leptines' part. This being so, there is no reason to exclude denigrating remarks.

Instead, Demosthenes spares his opponent from attacks with some ostentation. Whenever he alludes to possible character faults, he explicitly denies that Leptines has one of them. He almost seems to play with a convention on abuse of a kind that has been stated for the deliberative speeches: for example, having alleged that Leptines wants to make the character of the Athenians equal to his own, Demosthenes changes at once to a more conciliatory tone: 'even if he is a really good man and for all I know he may be one . . .' (§14). Similarly, when he maintains that Leptines had not read Solon's laws before making his proposal he says: 'and pray, don't be angry, for I am not going to say anything offensive about you . . .' (§102). If it was just the case that attacks on Leptines were not worth while because he was not liable to punishment, this sort of ostentatious 'gentleness' with no more than a pinch of irony would not be necessary.

⁵ It stands thus in a contrast to the other political trials.

The *σύνδικοι* (or supporting speakers), too, are treated with respect (partly perhaps they had been elected by the assembly, not called by Leptines).⁶ Aristophanes' immunity, for example, is mentioned and acknowledged: 'He obtained his grant, which included immunity, by your votes. I find no fault with that.'⁷ This, too, would not have been necessary if the character of the whole trial had not been quite different from that against Timocrates and the *γραφαὶ παρανόμων*.

The legal issue, the law of Leptines, is also very different from the official cause of the other political trials in that it does not seem to be the excuse for the trial but that the abrogation of the law is indeed the only goal of the prosecutors. The law's being in force or not does make a difference to at least one of them. So the trial is not just an opportunity sought in order to talk about politics in general and to slander one's political or personal enemy. There is no need to dwell on Aeschines' prosecution of Timarchus. The legal basis of this case is not a recent event, but an alleged offence Timarchus had been committing for quite a while without Aeschines' finding fault with it. Aeschines only initiated the trial when he had to get rid of his enemy and prosecutor, as 'an anticipatory retaliation'.⁸ In the accusations of bribery and defalcation the prosecution is primarily concerned with personal misconduct, not factions or concrete policies;⁹ political activity is only the background against which the bribery and personal lapses are shown. In a similar way, the honorary decrees that are indicted do not form part of a specific policy, but are simply the expression of approval of political actions (Dem. 22, Hyp. 4) or of the worthiness of the honoured politicians (Aeschin. 3, Dem. 18, 23). Finally, Timocrates (Dem. 24, a *γραφὴ νόμον μὴ ἐπιτήδειον θείναι*) seems to have proposed his law in order to help political allies, Androtion above all, avoid imprisonment as a consequence of their debts to the state, not in order to change Athens' financial policy. Partly the aim of the trials seems to be to remove the prosecutor's enemies from the political stage or at least to harm their reputation. A direct political effect is not to be expected from them apart from the intimidation or weakening of the rival political group.

It is hard to tell exactly what was or would have been the effect of Leptines' law passing the legislative procedure. In principle, it seems that the proposal was a reaction to the financial situation of Athens during the Social War and afterwards.¹⁰ However, it would not have affected the public funds very much. For liturgies did not concern the *πόλις* but the *φύλη* or rather the serving

⁶ §146, cf. below.

⁷ §148; however, it is appreciated only as an honour bestowed by the people, not as an award for genuine achievements: *δεῖ γὰρ ἐφ' ὑμῖν εἶναι διδόναι τὰ ὑμέτερ' αὐτῶν οἷς ἂν βούλησθε*.

⁸ Fisher (2001), 5.

⁹ Dem. 19 and Aeschin. 2; Din. 1, 2, 3, Hyp. 2. *Against Midias* may also be grouped with these cases of misconduct.

¹⁰ The *communis opinio* from Schaefer (1885 7), i. 391 at the latest (cf. also Sealey (1993), 113) is that the law is to be seen as one of numerous measures touted as improvements to the financial situation. This need not be true, cf. the following.

individual.¹¹ Therefore, the law must have been a primarily symbolic act of burdening those who might have been felt to contribute too little to public welfare. This becomes clear from the opening clause: 'to the end that the wealthiest citizens may perform the liturgies' (§127). Thus it was probably welcomed by the mass in the assembly.¹² It was an act suitable for exploiting the mood of the public rather than consolidating the liquidity of the Athenian state. Demosthenes cannot admit that the law is based on the people's resentment against those freed from liturgies: this would appear as an accusation of the *δήμιος* and thus of the jury.

For the prosecutors the reason for initiating the trial might partly be clearer. With regard to Bathippus and later Apsephion, it is true, we can only assume why they opposed the quite popular decision to charge the extremely rich with a sort of additional tax. They might have belonged to a 'conservative' faction¹³ or to those exempt, or they might have acted on behalf of such people.¹⁴ This remains obscure because of the scanty evidence about their family. Phormio, the main speaker of the prosecution is likewise unknown to us. Chabrias' son, however, had a good personal reason to wish to get rid of the law: had it come into force, he would have been deprived of his immunity from liturgies and suffered material loss. Demosthenes must not reveal that the incentive for the prosecution is money rather than commitment to the benefit of the state. Still, several times he hints at what is probably the true reason for the law and the trial, as he is asking the audience not to be jealous of those justly enjoying their riches and exemption from liturgies.¹⁵

However dubious the motives are for which Ctesippus joined the prosecution, it is the content of the law that is attacked, not the proposer or the defendants. In contrast to the honorary decrees and whatever else is attacked in the extant forensic speeches, it has an effect, even if that is restricted to private wealth. At least Ctesippus fights for his privileges and not against Leptines.

¹¹ Cf. §25 and Sealey (1993), 126. The number of services that the entire community had to spend was fixed. Equally, the number of ships to be built did not depend on the riches of the trierarchs. So to the public finance it mattered only peripherally who took on the liturgies. At best, the expenditure for the liturgies grew more lavish when paid by the richest, cf. Sandys (1890), p. xxi. One might think that the income from the *εἰσφορά* was indirectly affected by the law: if those not rich enough for the *εἰσφορά* had to pay for liturgies, more money would remain in the hands of those who had to pay the war-tax. Since none of the rich was exempt from this levy, the proceeds would be higher. Leptines' intention was certainly not to abolish *all* tax exemptions as stated in Dem. 20. 29, cf. MacDowell (2004), 128.

¹² Sandys, loc. cit. rightly suggests that the law was likely to be popular with the poor as having a 'thoroughly democratic spirit', though he is probably wrong in assuming that it led to their relief.

¹³ Cf. Ch. 3 n. 1.

¹⁴ Rubinstein (2000), 139 stresses that there were possibly political ties between the prosecutors, but that we do not get an indication of this.

¹⁵ §§25, 140 1; if the Athenians pass the law, *they* will seem to be envious (§§10, 139, 164). Ctesippus' struggle for his father's privileges seems to have been notorious, cf. Diphilus *PCG* 37.

The interpretation of the trial as one in which the content of the statute played a larger role than affiliations to a particular political faction is confirmed by the constellation of the group of defendants. Many interpreters of the case have taken for granted that the five speakers were closely allied or even friends.¹⁶ This assumption seems to be in accordance with the fact that around the time of the trial one of these *σύνδικοι*, namely Aristophon, also proposed a measure to improve public finance by a stricter exaction of debts to the state (Dem. 24. 11). The prosopographical approach, however, leads to the opposite result: there is good evidence that the *σύνδικοι* did not belong to the same political group, but were in principle rivals who united for the occasion.¹⁷

If we look at foreign policy over a longer period we find that Leptines was probably not associated with Leodamas: the former stood on the side of those who wanted to support the Spartans in their fight against Thebes (Arist. *Rh.* 3. 10, 1411^a 6); the latter is known as a friend of the Thebans.¹⁸ Aristophon, too, does not seem to have been in a close political relationship with his fellow defendants Leodamas and Cephisodotus. If Cephisodotus had been a political ally or partisan of Aristophon, it would be astonishing to see him prosecuting one of Aristophon's closest friends a few years after the Leptines trial: the friendship between Aristophon and Chares seems to have been notorious and certainly existed a short time before the Leptines trial;¹⁹ but Cephisodotus attacked Chares when rendering an account of his strategy at Olynthus, probably around the year 349.²⁰ It would be possible to explain this as a shift in political alliances. However, the case for conflict between these people is much stronger than that for cooperation, which rests entirely on *Against Leptines*. Rather, the speakers acted independently, each one defending the law for his own reasons and not in the course of any form of lasting political cooperation. There is even one more clash between the defendants, which makes it all the more unlikely that Leptines' supporting speakers were all from his own faction. Aeschines in his speech *Against Timarchus* reports that Hegesander opposed Aristophon until the latter threatened him with an *ἐπαγγελία* for prostitution. Not much later Aeschines holds that Leodamas had an indecent affair with Hegesander.²¹ We do not have

¹⁶ Sealey (1955a), 79 'doubtless there was friendship . . . between Leodamas, Aristophon, Cephisodotus, Deinias, and presumably Leptines'; Dušanić (1979) supposes the existence of three parties, Leptines and Cephisodotus being in a different one from that of Leodamas and Aristophon.

¹⁷ About Deinias too little is known to detect his political standpoint.

¹⁸ Aeschin. 3. 139 9, cf. Cawkwell (1961), 84.

¹⁹ Schol. Aeschin. 1. 145 (κεκωμώδεται ὁ Ἀριστοφῶν ὡς ὑπὲρ Χάρητος μισθοῦ λέγων) suggests a financial basis for the cooperation. But this information is comedy, so the basis is not unlikely to be an imputation. Aristophon prosecuted Iphicrates and Timotheus together with Chares in 356/5 (Din. 1. 14, 3. 17, Polyaeus *Strat.* 3. 9. 29, and elsewhere). This is more likely to have been a cooperation in order to knock political enemies off than the defence of the Leptines trial.

²⁰ Arist. *Rh.* 3. 10, 1411^a 6 9, Schol. Dem. 4. 102b.

²¹ Aeschin. 1. 64 (with scholion), 70, 111; we can believe that there was a quarrel between Hegesander and Aristophon, though the subject of the *ἐπαγγελία* matches Aeschines' purpose too well to be credible.

to believe that this is right, but since Aeschines can allude to widespread rumours concerning the two of them (1. 70) it is reasonable to suppose that there was some sort of relationship which probably included political ties.²² Therefore, the alliance between these two defendants, too, is rather questionable.²³ Thus, it is not likely that the *σύνδικοι* formed a team that cooperated beyond this one occasion.²⁴

One point the five may have in common is a vague attitude in favour of an active Athenian foreign policy, against people arguing for a policy of consolidation. Aristophon's rivalry against Eubulus²⁵ and that of Leodamas against Diophantus²⁶ mark a shared opposition against their 'moderate' policy. We also know of initiatives launched by Aristophon as well as Cephisodotus in the 350s and 340s which must have provoked Macedonia.²⁷ The evidence, however, is too scanty to prove that the *σύνδικοι*, though they did not belong to the same 'faction', still pursued a popular, interventionist policy that fits attempts to exact money, presumably from the rich. Thus we cannot say that several factions united to defend Leptines' law. But at least we can be relatively sure that the *σύνδικοι* were not, as usual, friends or demesmen who as character witnesses put in a good word for the primary defendant.²⁸

This leads to another problem of the trial: we do not know what sort of procedure took place. It is now commonly referred to as *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι*,²⁹ although it was certainly not a regular procedure. Hansen suggests that the form of the trial was a compromise between that and the regular meeting of the *νομοθέται*: it was not Leptines who was accused, but the law; the defence was taken over by five *σύνδικοι* elected by the assembly, and the jury consisted of normal *dikasts*, not of those in a legislative procedure.³⁰ This

²² The relationship of Demosthenes and Aristarchus may serve as a parallel: there too the relation between political and rhetorical teacher and disciple is given erotic connotations by Aeschines (2. 166).

²³ Fisher (2001), 207 writes of a joint prosecution of Chabrias and Callistratus by Aristophon and Cephisodotus. I cannot find any evidence for Aristophon's being involved in this case. Besides, the dispatch of troops to the Chersonese initiated by the enemies Eubulus and Aristophon in 347 (Dem. 18. 70) shows that rivalry would not have excluded concerted action in some cases.

²⁴ Rubinstein (2000), 44 remarks that, in contrast to the less specified group of *συνήγοροι*, *σύνδικοι* were perceived as 'the voice of an association' (i.e. the *δῆμος*, a tribe, etc.), that means not as a team of personal friends. However, the distinction is not clear-cut.

²⁵ Dem. 19. 291, Schol. Dem. 21. 716.

²⁶ Inferred from Dem. 20. 146, Xen. *Hell.* 6. 2. 39, and *IG* ii². 106. 7 by Sealey (1955a), 79. 80.

²⁷ That means both favoured a strong, independent role of Athens. Aristophon: against Philip in the 340s (Theopompus *FGrH* 115 F 166, Dem. 18. 70, 75), Cephisodotus: before the Social War on behalf of Euboea, in 349/8 prosecution of Chares in the context of Olynthus: Arist. *Rh.* 3. 10, 1411^a 11, Dion. Hal. *Amm.* 1. 8.

²⁸ Compare e.g. Dem. 21. 206, 23. 206, Andoc. 1. 150, Hyp. 3. 12.

²⁹ Lipsius (1905 15), ii/1. 383 4 n. 33, followed e.g. by Hansen (1974), 47 n. 21, Rhodes (1985), 58.

³⁰ (1985), 351, cf. Calabi Limentani (1982), 358 61; this was argued in some extension by Schömann (1856); Sealey (1993), 126 thinks this was an arrangement worked out by the *θεσμοθέται*.

explanation has some important consequences. (i) The procedure must have been given a new name, if a name was at all necessary, or the name became inaccurate.³¹ It is, in any case, uncertain whether the trial would have been called a *γραφή*. (ii) The dikasts were apparently unsure themselves (or so Demosthenes assumed when writing the speech) what their office was because Demosthenes can tell them that by abrogating Leptines' law they put into force Apsephion's proposal (§99).³² They did not know themselves if they had the competences of *νομοθέται*. The fact that Demosthenes can exploit the dikasts' lack of knowledge hints at the session's being something exceptional and unheard of, not the usual form of trial. (iii) Whatever name the occasion bore and whatever the dikasts knew about the procedure (even if Demosthenes is lying), it is clear that there is still no difference between this trial and a legislative session according to the 'review law', by which inappropriate laws could be replaced:³³ for the *νομοθέται* are a jury selected by lot from the 6000 dikasts of that year ('those who have sworn') just like any jury, and the law is defended by five *σύνδικοι* who have been elected by the assembly.³⁴ The only substantial difference between the 'trial' against Leptines' law and a regular session of the *νομοθέται* may thus have been the way the procedure was launched, resulting from a *γραφή*. So formally the procedure seems to be much closer to *νομοθεσία* than to a *γραφή*. This changes the character of the 'trial', because it is no longer a proper trial, but rather resembles a deliberative situation, comparable to the assembly deciding on a decree.³⁵ The procedure has transcended the limits of the normal *γραφή* so that Demosthenes can 'minimize the difference between *dikastai* and *nomothetai*'.³⁶ He can suggest to the dikasts that they do indeed have the competence to accept Apsephion's proposal, as that would fall into their sphere of competence.³⁷

From these points it should be clear that the difference between a 'normal' trial and the hearing about Leptines' law does not primarily lie in Leptines' not being accountable nor liable to punishment. This alone would not be sufficient to explain the changed tone of Demosthenes' speech. The focus of the prosecution is on the law itself. Otherwise it would not have made sense for Apsephion to follow his father and 'prosecute' the law beyond the deadline for its becoming operative.³⁸ The

³¹ The law's being *ἐπιτίδεις* or not is mentioned as the issue in §§83, 88, 95, 153.

³² Hansen (1980), 93, (1985), 364.

³³ MacDowell (1975), 66–9.

³⁴ What is more, Demosthenes claims (§94) that Apsephion's law has been proposed as would have been necessary if he had asked for the repeal, that is the replacement of Leptines' law by his own. If he has launched the procedure for this repeal, why has he insisted on the current 'trial' being held? His lie may not have been so blatant in the end.

³⁵ Cf. Piérart (2000) and more cautiously Rhodes (2003*b*), esp. 128–9.

³⁶ Hansen (1985), 352.

³⁷ Hansen (1991), 168 points out that *νομοθέται* were probably chosen in the same way as the dikasts at ordinary trials.

³⁸ If the purpose of the trial had been the denigration of Leptines, Apsephion would not have had to take over the prosecution in a case in which denigration was impossible. Since he had not originally initiated the trial he would not have been punished for dropping the case.

character of Demosthenes' speech is rather comparable to that of the assembly speeches he delivered shortly afterwards.³⁹ Open denigration does not occur at all; there are some passages in which Leptines might be slightly ridiculed through irony,⁴⁰ but he is nowhere attacked directly. In two places Demosthenes makes some hidden allegations about Leptines' transgressing principles of religion. However, the common forms of abuse in religious terms do not occur. Instead, Demosthenes takes pains to keep or even heighten the dignified tone of the speech when he touches on religious questions.

A sign of this dignifying effect of religion in the speech is the relatively frequent use of the words for 'to pray for something to happen/to be averted' (*εὐχέσθαι*, *ἀπεύχεσθαι*), mainly in relation to the benefit of the state. Nine times, more often than in any other speech,⁴¹ the word is applied to the speaker himself or the Athenian public praying for a positive outcome of affairs. The addition of 'to the gods' in two instances shows that the connection to them is implied: thus 'praying' is unlikely to be just another word for wishing or a phrase with no awareness of the religious overtones.⁴² The passages in which it occurs are all either directly concerned with the unworthiness of abolishing exemption from liturgies or with the dignified Athenian national character, or they stand in the context of remarks on the same points.⁴³ The mention of prayers helps to create the ethos of the city's sincere counsellor or the people looking for the real good of the city – not short-term gain. Demosthenes thereby makes clear that he is on the side of those citizens who consider Athens' dignity. In §§45–8, for instance, Demosthenes has just told about Epicerdes of Cyrene who had been freed from tax because he gave money to the imprisoned Athenians in Sicily in or after 413.⁴⁴ He adds that it would be a shame if the living believed themselves better to evaluate the worthiness of this deed than the ancestors. It would be atrocious to declare Epicerdes unworthy of his honours. He goes on (§49):

εἰ τοίνυν τις ὑμῶν ἐκείνο πέπεισται, πολὺ τοῦ δεηθῆναι τίνος τοιούτου νῦν ἀπέχειν τὴν πόλιν, ταῦτα μὲν εὐχέσθω τοῖς θεοῖς, καὶ γὰρ συνεύχομαι, λογιζέσθω δὲ πρῶτον μὲν ὅτι περὶ νόμου μέλλει φέρειν τὴν ψήφον ᾧ μὴ λυθέντι δεήσει χρῆσθαι, δεύτερον δ' ὅτι βλάπτουσιν οἱ πονηροὶ νόμοι καὶ τὰς ἀσφαλῶς οἰκίαν οἰομένας πόλεις.

Now if any of you is persuaded that our city is far from needing such a benefactor today, let him pray to the gods it may be so, and I will join in that prayer; but let him also reflect,

³⁹ *Arg.* 2. 9.

⁴⁰ Cf. above, p. 237.

⁴¹ Ten times in the assembly speeches (3. 18 twice, 6. 23, 30, 8. 20, 51, 9. 33, 10. 20, 27, 14. 39; among these instance twice Philip is the one who prays for something), five times in Dem. 18 (1, 8 and 141 are formal prayers; 176 about Philip; 184 as part of a decree), eight times in Dem. 19 (four times in connection with the prayers and paeon by Aeschines, 128 and 130 twice each; 142 on the Thebans; 70, 71, 328), six times in speeches 21 to 24.

⁴² Without mention of the gods §§49, 55, 67, 106, 109, 157; with the gods mentioned (*εὐχομαι τοῖς θεοῖς*) §§25, 49, 161.

⁴³ For example, prayers were generally associated with purity, cf. Rudhardt (1992), 188, also Aubriot-Sévin (1992), 100.

⁴⁴ Cf. W. C. West (1995).

first, that he is going to give his vote on a law under which, if unrepealed, he will have to live, and secondly, that bad laws can injure even communities which fancy they are dwelling in security.

The speaker stresses the identity of his and his audience's interests. The desire for the good of their city is expressed. But the request for a prayer is connected with rational insight into the situation. For the matter at issue, the prayer is irrelevant. Its only purpose is to demonstrate Demosthenes' sincerity, his commitment to and interest in the public weal. This tone of the statesman Demosthenes reflects the tenor of the whole speech. He makes an appeal to the jury to decide according to what is best for Athens just as in an assembly. In the prosecution speeches of *γραφαὶ παρὰ νόμων* and in *Against Timocrates* the argumentation on matters of the public interest concerns mainly the enforcement of the 'rule of law'. In this speech it is different: Demosthenes does not leave out that argument, but worthiness, together with the prevention of short-sighted decisions, is the focus of his attention. The depiction of his own and the people's dignified behaviour brings out the difference between his policy and one that for a little material advantage and revenge against the rich forgets what is really expedient to the city.

As a part of the reasoning, religious ideas occur twice. The first instance (§§125–30) serves as the *anteoccupatio* against Leptines' prospective claim that it would be outrageous if any people were exempt from expenditures for sacred rites (*ἀναλώματα ἱερῶν*). Leptines might have complained in the pre-trial or the assembly session about the neglect towards the gods, if those with the highest financial capacity did not contribute to expenditures on the festivals. He might also have exploited arguments from the social sphere, such as the separation of a distinct class from the religious activity of the rest of the community. In any case, Demosthenes expects that Leptines will somehow exploit the term *ἱερά*,⁴⁵ conferring some religious importance on the liturgies through their connection with festivals. Therefore, he must try to deny that liturgies have anything to do with *ἱερά*. The refutation of Leptines' argument is not combined with a praise of the particular appropriateness of Demosthenes' own proposals in relation to religious regulations or the favour of the gods.

As has been shown in detail in connection with *Against Midias*, there is no firm evidence for the liturgy being viewed as a religious office. In that speech Demosthenes tries to play up the significance of the religious setting for the role of the choregos. Now he has the opposite task: he has to show that there is no

⁴⁵ If the trial was closer to the legislative procedure (and thus to a political debate) than to a trial, as I have suggested above, it was obviously still possible to introduce religious argumentation of this kind. This does not mean a transgression of the conventions set out in Ch. 6: in the legislative procedure the distinction between sacred and other matters was not the main one as it was in the assembly (if we can trust Dem. 24. 20).

such connection between the sacredness of the festival and the duties of the performer of a liturgy.

It is Leptines who, by exploiting the religious character of the occasion, suggests a sacred nature of these expenditures. The vagueness of the expression *ἀναλώματα ἱερῶν* makes it hard to attack his argument. So Demosthenes twists the meaning of the word *ἱερά*. He demonstrates that the stele that grants the descendants of Harmodius and Aristogiton tax-exemption (*ἀτέλεια*) excluding *ἱερά* does not refer to liturgies as contributions to *ἱερά*. Indeed, as the persons concerned were exempt from the regular liturgies,⁴⁶ the term *ἱερά* means something different. There is no certain way of knowing what was really denoted by the word on the stele, but in a technical sense, Demosthenes is probably right: *ἱερά* is likely to refer to *τέλη*, taxes attested for the fifth century which were paid by a particular group among the citizens each year.⁴⁷

Thus the text on the stele probably means that the descendants of Harmodius and Aristogiton were exempt from taxes (*ἀτέλεια* from *τέλη*), apart from those for the public cults. If Demosthenes separates liturgies from these cult taxes he is right because a liturgy is not in this sense a periodical levy. He can also refer to customary law, in which exemption included liturgies. His argumentation, however, is deceptive because he suggests that Leptines counts liturgies as these taxes, passing over the original wording *ἀναλώματα ἱερῶν*. He disregards the first word and narrows the meaning of *ἱερά* down to tax instead of 'religious/sacred things' (that is in this context: the festivals). So the fact that the expenditures for liturgies are not taxes for cults does not mean that they are not *ἀναλώματα ἱερῶν* at all. As Demosthenes himself shows in *Against Midias*, it was easy to associate the choregia at the Dionysia with a religious duty. So Leptines could just as easily highlight the occasion and depict the liturgy as religious expenditure.

In order to facilitate his manoeuvre of distorting the sense of Leptines' words, Demosthenes separates his quotation of Leptines' *ἀναλώματα ἱερῶν* from his interpretation of the stele. In this way he distracts his audience's attention from the real wording and meaning of Leptines' argument by interrupting the train of his argument. The inconsistency in the use of the word is thus not introduced abruptly; only when the term *ἱερά* is taken up again after a completely different point has been put forward is it used in a different meaning. Demosthenes inserts a complaint against the supposed attempt to use the gods as an argument, where the defendant is not able to bring forward a justification on a different basis (§126):

εἰ γὰρ ὁ μὴ δέν' ἄλλον ἔχουσι τρόπον δεῖξαι δίκαιον ὑμᾶς ἀφελέσθαι, ταῦτ' ἐπὶ τῷ τῶν θεῶν ὀνόματι ποιεῖν ζητήσουσιν, πῶς οὐκ ἀσεβέστατον ἔργον καὶ δεινότατον πράξουσιν; χρὴ γάρ, ὥς γοῦν ἔμοι δοκεῖ, ὅσα τις πράττει τοὺς θεοὺς ἐπιφημίζων, τοιαῦτα φαίνεσθαι οἷα μὴδ' ἂν ἐπ' ἀνθρώπου πραχθέντα πονηρὰ φανείη.

⁴⁶ On liturgies taken on by the families of Harmodius and Aristogiton (two trierarchies) cf. Davies (1971), 475 (Demokles II of Aphidna in 322), 478 (Proxenos II in 356).

⁴⁷ Schlaifer (1940), 236; cf. e.g. *IG* i³ 130, in Dem. 20 τὸ τῶν ἱερῶν τέλος (§128). Presumably, that money was used for the general support of a cult, cf. Parker (1996), 125, 169.

For if by appealing to the name of the gods they try to justify a robbery which they cannot justify otherwise, will not that be most impious and monstrous conduct? In my opinion, whenever a man appeals solemnly to the gods, his conduct ought to be clearly such as would not appear base even if supported only by human authority.

Thus he not only glosses over the shift in his argument, but can even disqualify Leptines' own point before allegedly refuting it.⁴⁸ He accuses Leptines of using an inappropriate argument by reference to the gods: the gods must not be used as a resort if there are no good arguments on a human level. On the one hand, Demosthenes seems to suggest that all the other arguments Leptines is going to present, are worthless or already refuted. The last one remaining, which he has not yet proved to be wrong (because he needs the present digression to finish it), is dismissed for purely formal reasons: he averts the possible objection that the old law was not optimal in relation to the gods by denying that this argument is valid if not backed by additional arguments on human justice. In this way he avoids having to defend himself immediately against the claim of religious flaws in the law he is arguing to retain. On the other hand, he insinuates that Leptines is misusing the gods to defend a law that cannot be defended on grounds of its being just. Demosthenes makes a distinction between human and divine justice, introducing a hierarchy with the divine sphere following a stricter idea of what is just: nothing that is not in accordance with human justice can be just with the gods. This hierarchy Leptines allegedly tries to pervert in his argumentation.

Thus the argument goes beyond an *anteoccupatio*: Demosthenes gains the opportunity to prove himself a man scrupulously concerned with the divine, but more than that he can turn the prospective allegation of impiety back against his opponent. The word *ἀσεβέστατον* marks Leptines not just as arguing in a wrong way with reference to the gods, but as actually offending them. In this way, Demosthenes even points to an aspect of his opponent's behaviour that is equivalent to what Leptines seems to accuse Demosthenes' party of. Thus he makes it more difficult for Leptines to exploit the argument on the lack of lavishly conducted liturgies: any argumentation will entail defilement of the gods and thus a detraction from their dignity – a property to which Demosthenes attaches so much importance throughout the speech. Demosthenes might even manage to bring Leptines into disrepute in advance. At least, the argument is sufficient to produce a stalemate by mutual accusations of neglect of the gods. Demosthenes indirectly assaults his opponent in a passage that deals with attacks on his (and his partners') own conduct towards religion. This is, as has been seen, a common device in Demosthenes: attacks against his opponents based on points of religious significance occurred mostly when he had to expect similar accusations. Nevertheless, one must not overlook that Demosthenes takes pains not to

⁴⁸ It is conspicuous that Demosthenes drops every personal reference as soon as he comes to this allegation. I regard this as another cue that in deliberative oratory personal abuse was a breach of conventions, cf. Ch. 6.

attack Leptines personally: he does not refer to him by name nor does he address him outright as ἀσεβής. Moreover, the attacks are strictly confined to the situation in the trial, and thus to something that might happen in the future, as Leptines has not yet spoken. Thus no concrete action is criticized, and Leptines' life outside the procedure is not touched upon.

Towards the end of the speech (§§155–62), Demosthenes launches a last series of attacks on the law, on the basis of its being contradictory to what a law should be like: it imposes two penalties for one offence, it does not allow an exception (although even a killer might be 'pure' on certain conditions, §158), and it makes inappropriate statements for the future. In the last passage (§§160–2) Demosthenes partly applies religious language to a motif that could easily be presented in non-religious terms. His point is that Leptines' law rules out any further ἀτέλεια, even though one never knows whether a situation like that of Harmodius and Aristogiton will occur again. In this case, he argues, it would not be possible to bestow similar honours on the next tyrannicides. But just because at the moment it seems as if that situation is not to recur, man must not act as if omniscient (§161):

ἀλλὰ χρὴ γε ἀνθρώπους ὄντας τοιαῦτα καὶ λέγειν καὶ νομοθετεῖν οἷς μηδεὶς ἂν νεμεσήσῃ, καὶ τὰγαθὰ μὲν προσδοκᾶν καὶ τοῖς θεοῖς εὐχεσθαι διδόναι, πάντα δ' ἀνθρώπινα ἡγεῖσθαι.

But as we are mere mortals, our language and our laws should not cause anybody's anger; we may both expect blessings and pray for them, but we must reflect that all things are conditioned by mortality.

This remark is again topical. It points to human feebleness and the unpredictability of the future. Demosthenes is going to elaborate the idea in the subsequent paragraph from historical examples. Awareness of the human condition is frequently alluded to in oratory, and the divine is by no means a necessary component in explaining the futility of human plans.⁴⁹ In the present exploitation of the idea Demosthenes brings it into play by allusion to another concept, that of excess and punishment: the word νεμεσᾶν and its derivative noun are regularly used of the gods' being angry and chastising the proud or disobedient.⁵⁰ Demosthenes leaves it open whether 'anybody' is to be thought of as man or god, but the latter case is suggested both by the emphasis on his and the audience's mortality (ἀνθρώπους ὄντας) and the issue of the limits of human foresight, which seems to touch rather on the gods' domain. It is thus appropriate to compare Demosthenes' formulation to the kind of euphemism in the assembly

⁴⁹ Cf. Dover (1974), 269–70.

⁵⁰ νεμεσᾶν Hes. *Op.* 741, 756, Pind. *Isthm.* 1. 3 (Delos as goddess?), Pl. *Min.* 319 A, Theoc. *Id.* 27. 63 – it is thus obviously a poetic or postclassical word; Ν/νέμεσις Hdt. 1. 34. 1, Aesch. *TrGF* 266, Soph. *Phil.* 518, Eur. *Or.* 1362, and elsewhere. For a definition see Arist. *Rh.* 2. 9, 1386^a14–15 and with regard to the gods 1387^a30–2.

and the courts that avoids mentioning possible dangers from the gods explicitly. Even without detailing the danger to the city, he hints at the provocation of the gods that might be implied in such a law. Instead, Demosthenes says, one humbly has to be aware of the own human weakness and rather pray to the gods.

The Athenians were introduced to the thought of pride and punishment most prominently in tragedy but also in other contexts, with the famous 'know thyself' being its translation into everyday philosophy.⁵¹ However, in oratory the motif is usually found without the religious notion.⁵² Since they will have been well acquainted with it, we may assume that the dikasts found it hard to escape the argument's suggestive force. Demosthenes thus uses the topicality and gravity of a commonplace, bolstered up by the dignity of the language and the partly vague, partly explicit reference to the gods, to conceal the weakness of his rejection of Leptines' law.

Behind the solemnity he disguises a sophism: he presupposes that after a tyranny and its overthrow the laws would still be same and that it would not be possible for the Athenians then to honour tyrannicides befittingly. Leptines' law may be flawed in that it would have to be changed in that case. But Demosthenes does not even mention the effect that possible tyrant-slayers may feel discouraged if they cannot be rewarded for their deed. Instead, he speaks only about the impossibility of excluding that there may once be a tyrant again. Demosthenes' attack is thus out of proportion in invoking gods and eternity for the fact that Leptines did not consider an extreme eventuality. Demosthenes distracts from the relative banality of the 'flaw' by targeting the allegedly hubristic mentality of the proposer of the law and changing the tone. The focus thus lies on the pride that is to provoke a negative reaction, not on the actual consequences of the law. The denigration is presented in a hidden form. Leptines is not openly declared the target, but the passages state a well-known maxim in general terms, conferring solemnity and the air of religious concern upon the speaker.

Thus, apart from the occasional mention of prayers, Demosthenes uses religious ideas twice in this speech. Both times he conceals attacks on Leptines by only contrasting his conduct with accepted behaviour. At the same time, both passages conceal a leap or a weak spot in his argumentation by a distraction from the main point and by a change to a different tone more full of pathos.

The main difference between this speech and the 'purely' forensic speeches on political issues is certainly the tameness in the treatment of the opponent. The instances of 'hidden denigration' are far from the aggressive, abusive allegations in the political trials. They emphasize the ethos of the speaker and do not name or openly target the opponent and his way of life. I have tried to explain this

⁵¹ Soph. *Aj.* 760 1, Eur. *TrGF* 799, other genres Solon *IE*² 13, Xen. *Hell.* 5. 2. 18, Pl. *Charm.* 164 E.

⁵² Dem. 15. 21, cf. Dover (1974), 269 70.

particularity of the argumentation as an effect of the form of the trial: the occasion on which the speech was delivered must not be regarded as a normal procedure in a court of law, where it was possible to pursue political ends. Instead, the Athenians had instituted a hybrid of legislative procedure and trial, with a strong emphasis on the former. The issue was not a pretext for power games among the political class, but the debate was on the law itself and its consequences. Accordingly, the tone and style of Demosthenes' plea correspond to those of the assembly speeches. The conventions of the latter were applied to this special occasion. So vilification of the political opponent, including abuse implying religious ideas, was inappropriate for the occasion.

8

Private Speeches I: Ritual Acts with Probative Force

CONSERVATIVE Athenians often expressed their discontent with the popular courts and the litigiousness of their fellow citizens. The so-called Old Oligarch complains that the Athenians conduct more suits than any other πόλις, and he knows that it is not possible for them to reform the judicial system without at the same time giving up much of the democratic character of their constitution.¹ Plato in the *Laws* finds fault not only with the courts in their general design but also with a more specific aspect. The system that demands an oath from both litigating parties, he says, used to work in olden times, when people still believed in the gods: Rhadamanthys was able to judge by this device because nobody would perjure himself to receive a favourable verdict. It may be more than just chance that Plato thus describes a form of reaching a decision that was widely used in archaic Greece, starting from the Homeric world and including Athens.² The task of the dikast was to find an oath formula by which he could settle the case according to whether a litigant took the oath or forfeited his case by refusing it. For the changed situation of his own time Plato (or ‘the Athenian’ of his dialogue) gives the following recommendation (*Leg.* 948 D E):³

μεταβεβληκυῖων οὖν τῶν περὶ θεοὺς δοξῶν ἐν τοῖς ἀνθρώποις μεταβάλλειν δεῖ καὶ τοὺς νόμους ἐν γὰρ λήξεσιν δικῶν τοὺς μετὰ νοῦ τιθεμένους νόμους ἔξαιρεῖν χρὴ τοὺς ὅρκους τῶν ἀντιδικούντων ἐκατέρων, καὶ τὸν λαγχάνοντά τῷ τινα δίκην τὰ μὲν ἐγκλήματα γράφειν, ὅρκον δὲ μὴ ἐπομνύναι, καὶ τὸν φεύγοντα κατὰ ταῦτά τὴν ἄρνησιν γράψαντα παραδοῦναι τοῖς ἄρχουσιν ἀνάμοτον. δεινὸν γάρ πον, δικῶν γ’ ἐν πόλει πολλῶν γενομένων, εὖ εἰδέναι σμικροῦ δεῖν τοὺς ἡμίσεις αὐτῶν ἐπιωρκηκότας, ἐν συσσιτίοις τε ἀλλήλοις εὐχερῶς συγγιγνομένους καὶ ἐν ἄλλαις συνουσίαις τε καὶ ἰδιωτικαῖς συγγενήσεσιν ἐκάστων.

The climate of opinion about the gods has changed, so the law must change too, and a legislator who knows his business ought to abolish the oaths sworn by each side in a lawsuit. When a man brings a charge against someone, he should put his accusations in writing without taking an oath; the defendant should similarly write out his denial and

¹ Xen. *Ath. Pol.* 1. 16–18, 3. 2, 8, cf. the parody of a trial and the caricature of the average dikast in Aristophanes’ *Wasps*; more in Christ (1998), 72–90.

² Cf. Latte (1920), 6–10 and Thür (1996).

³ Aesch. *Eum.* 432 points to the same danger.

hand it to the officials unsworn. For it is dreadful, you see, to know quite well, in view of the frequent lawsuits that occur in the state, that pretty nearly half our citizens have perjured themselves and even so they go on mixing with each other at common meals and other public and private gatherings without the slightest qualms.

The passage directs our attention to an aspect of religious life that has been all but passed over in Part I: the form of religion that was not adduced by the speakers from outside the legal and administrative sphere but was already inherent in the setting in which the speeches took place: for example, all groups of participants in trials had to swear oaths at some point. Thus oaths were required to launch a lawsuit (to declare that one was prepared to carry it through) or to confirm certain facts (in connection with testimonies). The form of oaths had to be applied even where nothing further depended on the sacredness of the procedure. The oaths that are referred to are ones which the participants in the trial are obliged to take in order to follow the regulations of legal proceedings. In a kind of 'performative'⁴ utterance they trigger or influence the procedure, while at the same time there is no other way except an oath for litigants to achieve their aim. That means they have to take an oath, and by saying 'I swear' they do not choose a religious form but take the only possible way to carry on with the procedure in the way they desire.

So the oaths are not, as a rule, referred to by speakers for their form and its connection to religion. The public forensic speeches contain so many 'external' references to the litigants' conduct concerning religion that the religiosity 'inherent' in the trial carries little weight. In the private speeches,⁵ such references to religious procedures in the courts of justice are among the most frequent, so that they deserve particular consideration. Taking an oath is only the most common and obvious act, so the first part of this chapter will deal with references to oaths,

⁴ The terminology is that of J. Austin (1975), 6: the term 'indicates that the issuing of the utterance is the performing of an action'; more precisely one can describe them as 'exercitive' or 'commissive' speech acts (151–2).

⁵ It is difficult to find a neat criterion to distinguish public and private trials (cf. Lipsius 1905 15, ii/1. 237, Todd 1993, 98–9). The Athenians themselves can speak of 'private and public lawsuits' (*ἰδῖαι δίκαι καὶ δημόσιαι*), often associated with the two types of trial called *δίκαι* (in the narrow sense of the word) and *γραφαί*. The main difference between them concerns the permission to launch a suit, which is granted only to those concerned or anyone respectively. If we accept this formal criterion, extraordinary procedures (Todd 1993, 99 counts them as a separate third group; the only difference relevant to us is Dem. 57, on which cf. below, p. 281) fall into the category of public trials. This matches their content quite conveniently, especially *εἰσαγγελία* and *δοκιμασία* (for conduct detrimental to the state and qualification for public offices). This leaves us with about 50 extant private speeches. In the Demosthenic corpus, speeches 27 to 57 belong to this group. The speeches of Isaeus all qualify. From the *Corpus Lysiacum* only *orr.* 10, 11, 17, 32 count, the rest are public, deliberative, or epideictic speeches; Hyperides' *Against Athenogenes*, his only extant private speech, can now be supplemented with substantial fragments of *Against Timandros*, cf. Tchernetska (2005); of Isocrates' speeches *orr.* 16–21 were written for private cases (19 was delivered to a non-Athenian court); several others (*Lys.* 1, 4–5, as well as the speeches of Antiphon), dealing with (attempted) homicide, are private speeches, but were delivered before the Areopagus and the *ἐφέται* respectively, not the ordinary heliastic court.

mainly those taken directly in the courts, which form the biggest group. However, outside the courts the Athenians knew more procedures of this kind which had some impact on the legal dispute. For this reason the second part will deal with these official and semi-official procedures and ceremonies that count as declarations and thus as useful evidence. Religious ceremonies have a function for which the religious character is not essential. However, it is still possible to call attention to the religious form and give the argument a special twist. Where this is the case, the focus of the argument shifts to the form rather than the content of the declaration.

Oaths

The oath Plato probably has in mind in the passage quoted above is *ἀντωμοσία*,⁶ one by which the litigants declared during the pre-trial that their respective statements on the issue were true.⁷ By metonymy the word is then used for the accuser's statement itself and the suit that results from it. The oath thus triggers the procedure and no procedure can start without it. At some point in the 370s, when accusers no longer dictate the charge to the clerk but submit it in writing (as Plato recommends), the word ceases to be used.⁸ This suggests that the religious form of the oath (Plato's appeal to abolish it may be a hint that it was retained) was not essential to the procedure; it had just been the most formal part of launching the suit and was replaced as such by the newly introduced written plaint. Moreover, where *ἀντωμοσία* is mentioned in a speech, nothing indicates that this mention is included with a view to the religious force of the oath.

The most important features of *ἀντωμοσία* in this context – its being inevitable and its performative power – are paralleled by other oaths. In homicide cases *διωμοσία* substituted for *ἀντωμοσία* as assurance about correctness of the charge. It is described as particularly frightening and serious.⁹ The exceptionally awesome procedure we have encountered makes the religious notion palpable. The same name *διωμοσία* is used for the oaths witnesses swear to the truth of their testimony.¹⁰ There the religious significance is hard to assess. Speakers can just use the word as synonym of 'testify' (*ματυρεῖν*). The only time one can suspect any indication of the religious procedure is when a distinction seems to

⁶ Pollux (8. 54) knows a *προωμοσία*, which, however, does not occur in extant oratorical works. For further information on the word and its uses cf. Lipsius (1905 15), iii. 829–30.

⁷ In this meaning the term occurs, for example, in Isae. 5. 2.

⁸ Cf. Calhoun (1919), 189, Fezzi (2004), 115–16. Dem. 43. 3, the latest occurrence, is dated to 345 by Thompson (1976), 63, but the speaker refers to the time of Hagnias' death, which probably occurred in the 370s, cf. Humphreys (1983), 225.

⁹ Cf. above, Ch. 4, p. 126 on the ceremony and below, Ch. 9.

¹⁰ Cf. Lipsius (1905 15), iii. 885, 900. Pausan. Att. s.v. *ἀντωμοσία*, Tim. Gramm. and Lex. Cant. s.v. *διωμοσία* and most scholia and lexica, however, do not recognize a difference between the two. The lexicographer's information is not always reliable, but this statement largely conforms with the evidence we have. It is certainly correct for the *διωμοσία* in homicide trials.

be made between testimony and oath: 'These witnesses, then, you have heard giving their testimony and taking their oaths' (μαρτυρούντων καὶ διομνυμένων, Dem. 57. 39).¹¹ But even here it is doubtful whether the speaker wanted to express the religious nature of the act rather than give more weight to the fact that he has witnesses to present.¹²

The immediate effect of a procedural oath is best visible in ὑπωμοσία. A litigant (or his agent) swears it and thereby postpones his trial because of illness or forced absence.¹³ When speakers mention this oath, they never address anything but the technical procedural significance: they can complain about the opponent's tactical use of this instrument to evade a trial, but nothing in the text compels one to believe that they try to insinuate anything like perjury on the opponent's part.¹⁴

So only with the particularly eerie oath in homicide trials is the religious character drawn on by the orators. Things differ in the case of ἐξωμοσία, which was never taken by the litigants themselves but by witnesses who refused to confirm a deposition drafted for them by one litigant.¹⁵ As we have seen in Aeschines' first speech, it was used as a procedural trick by the prosecuting party to discredit witnesses of the defendant. The same applies to the instances in the private speeches.¹⁶ The speaker knows in advance that the witness is not going to give evidence and prepares his audience for his refusal. So despite being an official and formalized¹⁷ part of the procedure, in the event ἐξωμοσία was turned into a rhetorical tool in the hand of the litigants, with the religious aspect becoming more prominent. This is the case most of all in *Against Timarchus*, but the private speeches also show awareness of the religious potential of the oath and are prepared to exploit it. When the witnesses Apollodorus calls refuse to confirm, he explicitly accuses them of perjury (Dem. 45. 61):

¹¹ In this chapter, the issue of Demosthenic authorship is most pressing. It is beyond dispute that the *Corpus Demosthenicum* contains speeches written by Apollodorus (on whom cf. Trevett 1992; these speeches are Dem. 46, 49, 50, 52, and 53; Dem. 59 is a public speech) and some of unknown, certainly non-Demosthenic authorship (e.g. Dem. 40, 43, 47, 48; cf. Dion. Hal. *Dem.* 13 and Blass 1887 98 on the individual speeches). Despite the efforts of Blass, McCabe (1981), and many others, including Dover's important rethinking (1968*a*) of the method of production of logographic speeches, the debate is still far from over.

¹² Other instances Lys. 4. 4, Dem. 49. 20.

¹³ Such a ὑπωμοσία could be answered, as unjustified, by an ἀνθυπωμοσία (Dem. 48. 25, 58. 43). Another kind of ὑπωμοσία is the veto against a decree that launches a γραφή παρανόμων (Dem. 18. 103, Pollux 8. 56); this form too effects the postponement of a decision, but in the speeches the ὑπωμοσίαι that led to them is never mentioned.

¹⁴ Dem. 39. 37, 47. 39, 45, 48. 25.

¹⁵ Cf. Ch. 2 on this procedure and ἐξωμοσία of ambassadors, which is irrelevant for the present purpose.

¹⁶ Isae. 9. 18 19, Dem. 45. 61.

¹⁷ Arist. *Ath. Pol.* 55. 5 shows that the procedure is fixed and elaborated.

οὐκ ἄδηλον ἦν, ὧ ἄνδρες δικασταί, ὅτι τοῦτ' ἐμελλον ποιήσῃν, προθύμως ἐξομείσθαι. ἵνα τοίνυν παραχρήμ' ἐξελεγχθῶσιν ἐπιωρκηκότες, λαβέ μοι ταύτην τήν μαρτυρίαν καὶ τήν πρόκλησιν.

It was plain enough, men of the jury, that they would do this – take the oath of disclaimer with eagerness. Well, then, that they may at once be convicted of perjury, please take this deposition and challenge.

In the private speeches the exploitation remains comparatively weak: unlike Aeschines, Apollodorus does not stress the consequences of perjury by evoking the curse that is included in the oath formula. However, it is conspicuous that the form of procedural oath that has the least effect on the procedure and is employed only for rhetorical purposes contains the strongest hint at the religious character of the act of swearing; in other words: the more removed the procedure from necessary practicalities, the higher the inclination to highlight the religious form.

This tendency continues in a form of argumentation in which the oath, or rather the refusal to swear, is central. In an old form of dispute-settling the litigant could tender an oath, and if the opponent accepted it, he won the case. This procedure possibly lived on in Athens in the arbitration and pre-trial stages.¹⁸ Speakers employ and draw on the oath-challenge (*πρόκλησις εἰς ὄρκον*), a form that derives from the old dispute-dissolving oath but may have lacked the binding character of a statement thus gained.¹⁹ The challenge is issued during the pre-trial. In the trial stage of the dispute, however, it is only referred to, and only if it has been declined. It is then not an obligatory part of a procedure but only a means of arguing,²⁰ for it does not bring any new evidence to light or start a new procedure. Instead, it only offers the possibility of lending more force to a statement by giving it the religious character of an oath. The importance of the *πρόκλησις*, therefore, does not lie in influencing the procedure, but only in its character as a missed chance to give a statement higher authority. That means if the speakers mention a challenge, they cannot corroborate the truth or falseness of the contention in the light of the evidence, but can only make a statement about the trustworthiness and validity of the speaker and his oath.

Two forms of *πρόκλησις* were available to the litigants: they could challenge the opponent to swear a pre-formulated oath or offer an oath the opponent would then tender to them. Judging from the evidence of the extant speeches, the acceptance of either form was a rare exception.²¹ Rather, challenges seem to have been made in such a way that the opponent would see himself forced to decline.

¹⁸ On the archaic procedure cf. n. 2.

¹⁹ As to the role of the challenge in Athens in the 4th c. BC the most recent attempt at a solution (against the automatic settlement reached by an accepted *πρόκλησις εἰς ὄρκον*) is Gagarin (1997), esp. 129–30 against Mirhady (1991), esp. 83.

²⁰ Arist. *Rh.* 1. 15, 1377^a8–^b12.

²¹ The only known case was also planned as a refusal: Mantias' first wife had promised him to deny his parenthood of her sons but then swore to it, Dem. 39. 3–4, 40. 2, 10–11 Nobody mentions

Again (as with *ἐξωμοσία*) the anticipated refusal is sometimes accompanied by increased prominence of the religious aspect of the challenge. In places the oath-challenge is paraphrased by the formula 'to give assurances' (*πίστιν ἐπιθεῖναι*) without any hint at the religious component of that act.²² But even this phrase can be accompanied by a reference to the family members on whose heads one swore, and thus to the curse (Dem. 29. 33):²³

ἔτι τοίνυν ἡ μήτηρ πίστιν ἠθέλησεν ἐπιθεῖναι κατ' ἐμοῦ καὶ τῆς ἀδελφῆς παραστησαμένη, λαβεῖν τὴν προῖκα τοῦτον τὴν ἑαυτῆς κατὰ τὴν τοῦ πατρὸς διαθήκην.

Besides this, my mother was ready to call to her side my sister and myself, and swear with imprecations on our heads, if she spoke falsely, that Aphobus had received her marriage portion according to the terms of my father's will.

The rule is to refer explicitly to the oath to which one challenges. Since an accepted *πρόκλησις* could in principle still decide a case,²⁴ an oath was attributed higher significance than a normal allegation. Oaths (or the willingness to swear) lend more credibility to a statement. The way the speaker exploits a challenge depends largely on whether he issued or received it.

If the former, one can take the opponent's refusal as indicative of his being in the wrong. Thus Demosthenes in one of his inheritance trials can contrast his party's willingness to swear with his opponent's refusal, stating (Dem. 29. 57): 'By the gods, I certainly could think of no better way than this to establish these facts.' The opponent does not dare swear against him, presumably (but this remains unsaid) because he is afraid to perjure himself.

Even if the challenge is one-sided, this type of exploitation is possible. A certain Callippus apparently mentioned such a case: he claims (and even provides witnesses) that he tendered an oath to his opponent's father, who refused to take it (Dem. 52. 15). How Callippus exploited this indirect confession is not reported, but it seems to carry great weight with his audience: his opponent is forced to deny the truth of the fact (§§16 17). We can suppose that Callippus suggested the father was afraid to perjure himself and therefore declined the challenge, for the avoidance of perjury is a motive brought up in a different passage (Dem. 33. 13 14):

ἐνεστηκυίας δὲ τῆς δίκης δίδωσιν ὁ Παρμένων ὄρκον τούτῳ περὶ τινων ἐγκλημάτων, καὶ οὗτος ἐδέξατο, ἐπιδιαθέμενος ἀργύριον, ἐὰν μὴ ὁμόσῃ τὸν ὄρκον. καὶ ὅτι ἀληθὴ λέγω, λαβέ μοι τὴν μαρτυρίαν.

an oath he or someone from his party has been allowed to take in the current dispute. Similarly, nobody accepts a challenge to tender an oath in our sources.

²² Dem. 49. 42 3, 50. 31, 52. 28, Isae. 9. 19; cf. Pollux 1. 38.

²³ Also in §§54, 56.

²⁴ Dem. 39/40, cf. above, n. 19; this instance does not prove that the oath decided the case, but at least it weakened Mantias' position so much that he could not but concede.

MARTYPIA

δεξάμενος τοῖνυν τὸν ὄρκον, εἰδὼς ὅτι πολλοὶ αὐτῷ συνείσονται ἐπιорκήσαντι, ἐπὶ μὲν τὸ ὁμόσαι οὐκ ἀπήντα, ὡς δὲ δίκη λύσων τὸν ὄρκον προσκαλεῖται τὸν Παρμένοντα.

When the action had been instituted, Parmeno tendered an oath to Apaturius regarding some of his charges, and he accepted it, and furthermore made a deposit to be forfeited if he did not swear the oath. In proof that my words are true, take the deposition.

DEPOSITION

Having accepted the oath, since he was aware that many would know that he had perjured himself, he did not present himself for the swearing, but, as though he could get free of the oath by an action, he summoned Parmeno into court.

The fact that Apaturius backs down is interpreted as indication of the falseness of his claims and his wish to avoid perjury. However, the speaker suggests that Apaturius is not afraid of perjury but public opinion. In this way he can claim that his opponent is insensitive to the seriousness of this offence on top of proving that Apaturius is lying.

If, however, the speaker receives a challenge to allow an oath, he needs to explain why he does not accept it. Justifying his refusal means he has to deny that the oath could have had any significance. The speakers confronted with that situation all react in a similar way:²⁵ by accusing the opponent of being a notorious perjurer. While lending their contention credibility in this way they press home their attack on the opponent's character: Apollodorus and Timotheus, for example, had challenged each other to oaths and both accepted the challenge. Apollodorus now regrets his challenge before the court and excuses it by his ignorance of the opponent's history of perjury. He declares that had he known about it, he would never have tendered an oath 'to one who would not only take no care to swear honestly, but who, when it was a question of gain, has not spared even temples' (Dem. 49. 65). Other examples of perjury then follow. Moreover, men like Timotheus are described as the cause of banks crashing (§68). Thus Apollodorus gives his allegations wider significance: the perjury is associated with damage to society's economy. This effect of perjury, however, is not directly related to the religious character of the offence.

Of Demosthenes' speeches in his own name, *Against Onetor II* contains a similar form of argument. Onetor has not formally challenged Demosthenes to tender an oath but may have indicated that he was prepared to do so. Demosthenes anticipates this line of argument (Dem. 31. 9):

²⁵ The weakest form occurs in the *Against Boeotus I*: Mantitheus reports that his opponent's mother took contradictory oaths (Dem. 39. 3). In the following speech – probably not by Demosthenes – he calls the same act perjury (ἐπιорκεῖν, Dem. 40. 2).

ἄξιον τοίνυν καὶ τὸν ὄρκον, ὅποῖόν τιν' ἂν ὥμοσεν, εἴ τις ἔδωκεν, ἐκ τούτων ἰδεῖν. ὃς γὰρ ὀγδοήκοντα μνᾶς ἔφη τὴν προίκα εἶναι, εἰ τότε αὐτῷ τις ἔδωκεν, ὁμόσαντι ταῦτ' ἀληθῆ λέγειν, κομίσασθαι, τί ἐποίησεν ἄν; ἢ δῆλον ὅτι ὥμοσεν; τί γὰρ καὶ λέγων οὐ φήσκει τότε ἂν ὁμόσαι, νῦν γε τοῦτ' ἀξιώων; οὐκοῦν ὅτι γ' ἐπιώρκησεν ἄν, ἑαυτὸν ἐξελέγχει νῦν γὰρ οὐκ ὀγδοήκοντα μνᾶς, ἀλλὰ τάλαντον δεδωκέναι φησίν. τί μᾶλλον ἂν οὖν εἰκότως τις αὐτὸν ἐκεῖν' ἐπιορκεῖν ἢ τάδ' ἡγοίτο; ἢ τίνα τις δικαίως ἂν ἔχοι περὶ τούτου διάνοιαν, τοῦ ῥαδίως οὕτως αὐτὸν ἐξελέγχοντος ὄντ' ἐπίορκον,

It is worth while to consider in the light of these facts what sort of an oath he would have sworn, if an oath had been tendered him. For, when he declared that the dowry was eighty minae, if one had granted that he should recover that sum on condition of his swearing that this statement of his was true, what would he have done? Is it not plain that he would have taken the oath? What can he say to deny that he would have sworn it under those circumstances, when he demands the right to do so now? Well then, his own words prove that he would have perjured himself; for he now claims that he paid, not eighty minae, but a talent. What reason is there why one should believe that he is forswearing himself in one statement rather than in the other? Or what opinion should one rightly hold of a man who thus lightly convicts himself of perjury?

Onetor seems to have offered to swear that the dowry in question²⁶ was a talent (60 minae), while he had previously claimed that it was 80 minae. Demosthenes denies that the dowry had ever been paid and had declined the challenge. Now he has to justify this rejection, and he too resorts to the accusation that an oath of Onetor's is worthless as he is willing to swear to anything that is convenient. But instead of giving examples of actual instances of perjury he hypothesizes an earlier challenge concerning the 80 minae there is no indication that Onetor would really have sworn to that claim. Demosthenes presents a fictitious situation, which enables him to say whatever he wants. The earlier perjury exists only in his argumentation, so the conclusion that there must be at least one false oath and the present oath need not be true *either* is a fallacy. The introduction of a hypothetical challenge on which allegations of perjury are based removes the argumentation one step further from the strictly probative oaths; in turn it enhances the merely rhetorical nature of the exploitation of the oath and stands out for the seriousness of the allegation if compared with the average treatment of the challenge. However, the way he wards off the *πρόκλησις* by the allegation of repeated perjury is the same as in Apollodorus' speech.

The extreme form of a hypothetical *πρόκλησις* is presented by Isaeus. The opponent's witness is alleged to be 'happy to swear an oath, if anyone tendered it to him' (Isae. 9. 24). We are dealing with a challenge that has not even been issued; we do not know whether the man would have sworn. Isaeus just postulates that he would and that the oath would be false. The connection to the procedural means actually employed, however, has ceased to exist.

²⁶ This was the security for his sister's dowry, who had been divorced from Aphobus, one of Demosthenes' guardians. Details of the case are irrelevant for our purpose; a summary is given e.g. by Pearson (1972), 165 7.

Related to the *πρόκλησις* is the unprovoked, 'free' oath that can be presented reinforcing one's contentions. This oath seems to have neither a name nor a fixed place in the rules of procedure.²⁷ There are, however, two instances in our corpora. One of them deals only with one particular fact, the relationship to the supporting speaker (Dem. 32. 31 2):²⁸

ἐμοὶ δ' ἐστὶ μὲν, ὦ ἄνδρες Ἀθηναῖοι, Δημοσθένης οἰκεῖος γένει (καὶ πάντας ὑμῖν ὅμνυμι τοὺς θεοὺς ἢ μὴν ἐρεῖν τάληθῇ), προσελθόντος δ' αὐτῷ μου καὶ παρῆναι καὶ βοηθεῖν ἀξιούντος εἴ τι ἔχοι...

Demosthenes, men of Athens, is indeed my relative (I swear to you by all the gods that I shall speak the truth), but when I approached him, and entreated him to be present and to aid me in any way he could...

It is only a marginal point whose truth is sworn to. It has no relation to the charge, but defends the speaker against the allegations of buying a skilled speaker as supporter. The second instance is a full oath to the truth of the speaker's main point. Ariston claims that he really suffered from Conon what he is charging him with. The oath is taken in its full form, including the curse at the end in case he does not say the truth (Dem. 54. 41):

ὁμνύω τοὺς θεοὺς καὶ τὰς θεὰς ἅπαντας καὶ πάσας ὑμῶν ἕνεκ', ὦ ἄνδρες δικασταί, καὶ τῶν περιεστηκότων, ἢ μὴν παθὼν ὑπὸ Κόνωνος ταῦθ' ὧν δικάζομαι, καὶ λαβὼν πληγὰς, καὶ τὸ χεῖλος διακοπεῖς οὕτως ὥστε καὶ ραφῆναι, καὶ ὑβρισθεὶς τὴν δίκην διώκειν. καὶ εἰ μὲν εὐορκῶ, πολλὰ μοι ἀγαθὰ γένοιτο καὶ μηδέποτ' αὐθις τοιοῦτο μηδὲν πάθοιμι, εἰ δ' ἐπιορκῶ, ἐξώλης ἀπολοίμην αὐτὸς καὶ εἴ τί μοι ἔστιν ἢ μέλλει ἔσεσθαι.

I swear by all the gods and goddesses, for your sake, men of the jury, and that of the bystanders, that I have in very truth suffered at the hands of Conon this wrong for which I am suing him; that I was beaten by him, and that my lip was cut open so that it needed stitches, and that it is because of gross maltreatment that I am prosecuting him. If I swear truly, may many blessings be mine, and may I never again suffer such an outrage; but, if I commit perjury, may I perish utterly, I and all I possess or ever may possess.

This oath, however, is presented as an anticipation of an even stronger oath Conon was going to swear to the opposite by the heads of his children. The speaker argues that Conon would swear to anything, if it were of use to him (§40), highlighting his unique proneness to perjury. In this way Ariston tries, on the one hand, to ward off the stronger oath by his opponent, devaluating it as meaningless; on the other hand he puts oath against oath, not leaving that of Conon unbalanced.

There do not seem to be any restrictions to the free oath. It can be taken about the core as well as about peripheral points of one's argument. Whether the small number of instances actually found is in any way representative of its actual

²⁷ It is, however, called *νόμιμον* ('legal' or 'customary') in Dem. 54. 40.

²⁸ On the identity of this Demosthenes cf. now Worthington (2002).

commonness must remain unclear.²⁹ The oath itself has no procedural consequences, only an emotional effect or one enhancing credibility. So it is nothing but a rhetorical means of influencing the dikasts in a subliminal way. It does not even lend particular force by an official form in which it is taken. This may weaken its effect: in one passage the speaker says he is willing to swear (Isae. 12. 10). This is only another way of demanding a *πρόκλησις*, for he could take a free oath in his speech. The fact that the speaker offers the oath, knowing that he will not be challenged to it, and does not just take it without being allowed it, may point at a hierarchy: the oath in combination with a challenge is worth more, possibly because the free oath was not taken with any formalities or at an altar.³⁰ In any case, the opponent is forced to acknowledge the oath taken in response to a challenge, while he may be able just to pass over one that was only part of a speech.

The *πρόκλησις* too is often assumed to be merely a rhetorical manoeuvre; the challenger issues it in such a way as to make acceptance highly unlikely – with no effect other than creating prejudice against the opponent.³¹ The element of mere rhetoric is beyond doubt in *Against Onetor II* and *On the Inheritance of Astyphilus*, when a challenge is discussed although it was not issued. The hypothetical *πρόκλησις* to prove perjury is at the same time the most direct exploitation of the religious nature of that procedural instrument. It argues in unfulfilled conditions, no longer referring to an oath actually taken. Nonetheless, the dikasts must be inclined to assume that a challenge is in principle a suitable means of settling the matter and finding the truth. This would probably not be the case if the *πρόκλησις* were always a merely rhetorical tactic and never intended to establish the truth. Equally, the retreat from an accepted challenge (Dem. 33. 14) must look realistic to the dikasts. This is possible neither if the acceptance never really happens, nor if the oath is just a formality which one performs without regard to its being true or false. This, however, is an area where we are confined to speculation since the speeches do not reflect the whole picture of Athenian litigation.³²

²⁹ I have not found any parallels to this oath in other speeches: passages usually cited (e.g. Carey and Reid 1985, 99–10) differ in that only pity is evoked (Ar. *Vesp.* 568–74) or that the oath was taken in the assembly (Dem. 19. 292).

³⁰ Cf. Ch. 2, p. 54.

³¹ Lipsius (1905–15), iii. 898, Gernet (1955), 110–11. For the analogous challenge to accept or present a slave for torture, Thür (1977), 233–86 has demonstrated that the absence of accepted challenges in our text reflects actual practice and that these challenges have not been edited out by the orators.

³² If a challenge was accepted, the case probably did not make it to the courts; so no speech would exist. Therefore, the condition of our hearing about it almost necessarily presupposes the refusal of the challenge. Another question is whether a *πρόκλησις εἰς ὄρκον* could still be issued in court. Isae. 12. 9 ('our father... was ready on the former occasion, and is ready now, to swear that Euphiletus here is his son by a mother who is a citizen and legally married') insinuates that both a witness and a speaker could still take the oath at the trial. This would be a striking difference from the challenge to torture. It is more likely that the speaker blurs the distinction between the *διωμοσία* or 'free' oath and a formal *πρόκλησις*.

A few general thoughts about the use and force of oaths may round off this survey. As has emerged, the treatment of oaths *qua* religious acts varies considerably depending on the type that is sworn. The exploitation of the religious form occurs with frequency that varies from never to regularly in roughly inverse proportion to the embeddedness of the oath in the procedure. The *πρόκλησις* is an invitation to swear an oath that is not a necessary part of the legal proceedings: while there cannot be a trial without *ἀντωμοσία* (at least before the 370s), the *πρόκλησις* is neither obligatory nor does it have any immediate effect on the trial, as long as it is not accepted. At the same time the *πρόκλησις* is the type the religious implications of which perjury on the one hand, higher authority of the sworn statement on the other are emphasized most heavily. Generally speaking, the tendency to exploit the religious implications of an oath increases as its connection to the legal procedure becomes looser.

The consequence of perjury is conspicuously always the same independent of the type of oath: on the human level it is a stigma (cf. Dem. 33. 14), but nothing besides. Unlike in modern society, perjury was not a criminal offence. Witnesses who confirmed a false deposition could be held responsible by a *δίκη ψευδομαρτυρίων*; people, however, who swore false oaths, for example if they refused the deposition by *ἐξωμοσία*, went scot-free. The punishment of perjurers was obviously left to the gods.³³

Perjury must have happened very frequently, given the high number of unavoidable oaths in legal proceedings. As a consequence, it may at first appear that people did not mind perjuring themselves (as Plato describes) and the oath became a trite formula without any particular binding force. Moreover, the accusation of perjury occurs often enough to put its seriousness in doubt. The ease with which one could accuse one's opponent of perjury and the inevitability of it in the legal system may suggest that the matter was taken lightly. The significance and probative force of oaths became debateable: Aristotle recommends that if a litigant does not offer an oath, he should say that people easily perjure themselves, and if he does not accept an oath tendered to him, that oaths are (sc. commonly) taken for money.³⁴

However, if we look at the evidence of extant private speeches, this tactic is never employed in this form. The allegation of perjury is usually not the only accusation against the opponent, but it is combined with further invective in the speech, which depicts him as a hardened villain, or even presents some further evidence for his being a notorious perjurer.³⁵ It is thus limited to individuals:

³³ This idea earns no mention in extant speeches except in the negative form that this is not enough in Isoc. 18. 2–3 (cf. below). It may be alluded to in Dem. 48. 52.

³⁴ Arist. *Rh.* 1. 15, 1377^a12, 15–16, cf., also *Rh.* *Al.* 17. 2, 1432^a39–^b3. For further arguments (and some counter-examples) cf. Plescia (1970), 87.

³⁵ Isoc. 18. 56, Isae. 2. 33, 40 (with accusations throughout the speech), Hyp. 5. 1, Dem. 31. 9, 45. 60–1, 47. 31, 48. 52 (combined with accusation of madness), 49. 65, 54. 38–40; exceptions are Dem. 39. 3, 40. 2, 10, 42. 29.

perjury is not presented as an occasional offence everyone commits for convenience, but ascribed only to people who must be condemned by the great majority of respectable and orderly people. There is, therefore, no evidence that speakers generalized in this regard: false oaths were not commonly viewed as negligible and a mass phenomenon. It is thus clear that the accusation of perjury is not easily hurled at people. The significance of perjury can even be broadened in that it is combined with offences to the public. The perjurer is thus not only untrustworthy and unreliable in the narrow field of the specific trial or in the private area, but a greater danger.³⁶ This matches the observation in the preceding chapter that in the assembly perjury is an accusation brought exclusively against enemies of the state. It is also consistent with the inflation of such accusations in the public forensic speeches, where the opponents are frequently prominent members of society.

Most passages confirm the importance of oaths in finding the truth. The superiority of sworn over unsworn statements is normally described as valid: it is frequently understood, even if not expressed, that a statement under oath is more reliable than one without oath. Thus the following remark is the most explicit one but by no means an exception: 'You would be justified then, members of the jury, in regarding our oaths as more worthy of credence than the statements of our opponents; for we, knowing all the facts, are willing to swear oaths concerning him, while they are repeating statements which they have heard from his enemies or uttering their own fabrications' (Isae. 12. 10). Several people are said to be inclined to bend the truth, and to be inhibited from doing so only by their oath, or reluctant to swear unless they are sure of the truth of their statements.³⁷ The same applies to arbitrators who do not speak a verdict in favour of friends because they are bound by their oath of office to judge in accordance with justice.³⁸ An oath can even be called the strongest proof (at least before an audience who have sworn an oath themselves, Dem. 55. 35):

ἔτοιμοι δ' ὁμνῦναι τὸν νόμιμον ὄρκον ταῦτα γὰρ ᾧόμεθ' ἰσχυρότατ' <ἂν> παρασχέσθαι τοῖς αὐτοῖς ὑμῖν ὁμωμοκόσιν.

We were ready to swear the customary oath; for we thought that would be the strongest proof we could bring before you, who are yourselves upon oath.

The oath at least increases the credibility of a statement and people may in general have been unwilling to perjure themselves just to help a friend. In the pseudo-Demosthenic *Against Olympiodorus*, the speaker can even take the preparedness of the defendant to offend not just him but also the gods by a false oath as an indication of his being out of his mind (Dem. 48. 52):

³⁶ Most notably in Dem. 49. 65 7; cf. also the xenophobic references in Hyp. 5. 3.

³⁷ Dem. 29. 26, 57. 22, 53, cf. also Dem. 47. 73 on the *διωμοσία* and 52. 31.

³⁸ Isae. 2. 31, 5. 32 3, Dem 29. 58, 34. 21.

οὐδὲ γὰρ αὐτὸς ἀγνοεῖ ταῦτα οὐτος, ὅτι ἀδικεῖ μὲν ἐμέ, ἀδικεῖ δὲ τοὺς θεοὺς οὓς ὥμοσεν, καὶ ἐπιорκεῖ. ἀλλὰ διέφθαρται, ὦ ἄνδρες δικασταί, καὶ παραφρονεῖ.

The defendant himself knows well that he has sinned against me and sinned against the gods in whose name he swore, and that he is a perjurer. But he is deranged, men of the jury, and not in his senses.

The speaker associates his opponent's behaviour with outright insanity, even in the judicial sense of mental incapacity.³⁹ Deliberately offending the gods (by perjury) is described as something one is virtually unable to do under normal circumstances. An explicit hint at the consequence of a false oath is found in the pseudo-Demosthenic speech *Against Euergus and Mnesibulus*.⁴⁰ The speaker explains why he refused to prosecute the killer of a servant as if he were her kinsman (Dem. 47. 73):

ψεύσασθαι δὲ πρὸς ὑμᾶς καὶ διομόσασθαι αὐτὸς καὶ τὸν υἱὸν καὶ τὴν γυναῖκα οὐκ ἂν ἐτόλμῃσα, οὐδ' ἂν εἰ εὖ ᾔδειν ὅτι αἰρήσοιμι αὐτούς· οὐ γὰρ οὕτως τούτους μισῶ, ὥς ἐμαυτὸν φιλῶ.

Now, to tell a false story to you and support it by an oath with imprecations on myself, my son, and my wife, was a thing I dared not do, even if I knew well that I should convict these men; for I do not hate them as much as I love myself.

The oath is not one of a private speech but the eerie *διωμοσία* of homicide cases. Not only does the speaker refer to the formula (the imprecation against himself, his wife, and his child) rather than being content with a simple reference to the procedure; he even alludes to the dangers awaiting him if he tells a lie. One qualification, however, needs to be made with regard to this passage: all this is found in the context of the consultation of religious expounders and the religious implications are a necessary component of the argument.⁴¹ As demonstration of the seriousness of oaths this passage is without equal in the private speeches.

Two objections can be brought forward against the view that there was only a small minority unscrupulous enough to say whatever was in their personal interest: the first is that of course the value and sacredness of an oath is part of the discourse and could not be disputed without alienating the *dikasts*. This must remain hard to confirm or refute, but it is to some extent supported by the second: the allegation of perjury is restricted to the unnecessary, rhetorical kinds of oath, that is those that do not serve the function of launching a procedure or carrying it further. These are the *πρόκλησις* and the free oath. The 'institutionalized' perjury is thus concealed, even though it would be easy, for example, to

³⁹ It counted as mental incapacity if a decision was taken under the influence of a woman. The speaker cites Solon's regulations (Dem. 48. 56) using the word *παραφρονεῖν*. Plenty of parallels confirm the word's terminological character, e.g. Isae. 1. 21, 2. 20, 26. The quotation of this law in Dem. 46. 14, however (usually regarded as genuine), uses the term *μανία* for mental derangement, as in Dem. 48. 53–5.

⁴⁰ Cf. Ch. 4 on Dem. 23. 68.

⁴¹ Cf. Ch. 9.

accuse someone who had already lost a trial of perjury in connection with his *ἀντωμοσία*. The Athenians, it seems, turned a blind eye to this kind of false oath, probably for practical reasons. The purpose of the *ἀντωμοσία* was to guarantee that one would stick to the charges one made to the clerk of the responsible official. But there is no indication anywhere that a defeat in a trial resulted in the reputation of being a perjurer.⁴² The inherent problem of the legal system that it filled the city with people who must have sworn falsely is not one that seems to bother anyone but a solitary intellectual like Plato. Pragmatism and the desire for a working judicial system prevail over the awareness of widespread perjury. The oath is necessary for the introduction of a hierarchy between a simple statement and a declaration that is attributed a higher value due to some sort of formalization. Therefore, the flaws in the system are not exploited, and the orators stick to that 'ideological' consensus of oaths' being normally unbreakable.⁴³ This is not to say that the orators, or the Athenians, consciously adopted and utilized that strategy. The problem belongs to the grey area of our knowledge about whether the Athenians themselves understood how and why their community could work so smoothly. It seems likely that the Athenians were able to deceive themselves to a considerable degree on some weak points.⁴⁴ And it may not take too much effort to 'forget' about some declarations (*ἀντωμοσία* etc.) being made on oath or to perceive some oaths as less serious than others.⁴⁵ So the sacredness of an oath is possibly more than just lip service (that is they do not stick to a convention even though everybody knew it to be empty). The trustworthiness of a sworn statement is more than a mere rhetorical *topos*: the oath is an accepted and trusted means of enhancing the value of a statement, and the involvement of the gods may, as the quotation from Dem. 47 shows, be clearly in people's minds. But the Athenians did not follow through with the idea of perjury and draw the ultimate consequences.

To sum up, the religious significance of oaths varied considerably, depending on the kind of oath. Speakers do not use the specific potential oaths had for denigration (the accusation of perjury) as a standard device, nor do they regularly

⁴² The same is true for the *ὑπωμοσία* in the assembly, which includes the promise that one will sue the proposer of a decree in a *γραφὴ παρανόμων* (cf. n. 13). Demosthenes, for example, does not try to suggest that Aeschines attempted to commit perjury concerning the *ὑπωμοσία* by evading the process about the crown until 330.

⁴³ Thus Mikalson (1983), 37 'Our sources appear to present a highly idealized picture of contemporary beliefs concerning oaths. If there were throughout the society a strong and uniform belief in the efficacy of the oath and of divine punishment for perjury as the oratorical sources would have us believe the situation would be like that which Plato (*Leg.* 12. 948b-d) attributes to the mythical age of the Cretan king Rhadamanthys.'

⁴⁴ Ober (1989) sets out many of the inherent contradictions in the Athenians' views on their state. The belief in the reliability of oaths (while passing over forced instances of perjury) may be part of ideology, which he describes as 'not necessarily clearly articulated [or] logically consistent' (38, cf. also 46).

⁴⁵ An element of psychology seems important in this connection, just as the seriousness of an oath can vary according to the circumstances in which it is sworn, cf. the oath at the temple of the Dioscuri in Ch. 2.

point to the religious nature of an oath that enhances the credibility of a statement. When speakers draw on it heavily, they usually mention the oath for this very purpose (because the mention is not conditioned by procedural necessity): in the case of the *πρόκλησις*, in particular the hypothetical form that does not even refer to a real challenge, and the free oath. The religious connotations are brought out far less (if at all) when the oath has a technical, procedural function. The reason why people would not perjure themselves without good reason is not mentioned very often, but it may have been sufficiently present in everybody's mind not to require explanation. Allusions to the curse and thus to the consequences of perjury can be made even without explicitly mentioning an oath.⁴⁶

So even if the social significance of perjury sometimes overshadows the religious notions,⁴⁷ there are enough instances to suggest that it was not a weak tactic to associate a broken oath with the offence against gods and divine laws.⁴⁸ The respect paid to the oath has probably not lost its connection with the religious origin of the act, and the idea of potential punishment in some form is still present when someone swears. The Athenian administration of justice even relied on this idea, as punishment for perjury was not envisaged by the law but left to the gods – in contrast to prosecution of a witness' simple lie.

Appendix: Oaths Not Sworn during Proceedings

Any list of oaths taken in the surrounding of the law courts needs to take the heliastic oath into account.⁴⁹ This type differs fundamentally from those mentioned so far: first, it was not taken by those speaking in the court but by those who sat listening; second, it was taken as a general oath of office by all 6000 dikasts at the start of the year and not repeated for each court session,⁵⁰ so it has no connection to individual trials; finally, it has neither procedural value nor probative force. The dikasts are often reminded of their promise to listen impartially to each side's arguments and pass their verdict in accordance with the statutes and the principles of justice.⁵¹ The religious side is also referred to. Sometimes the dikasts may be admonished to be faithful to their oath (*εὐορκοί*) or warned that the opponents will try to instigate them to perjury. Though it is never 'employed' during a trial, it is nevertheless the form of oath referred to most frequently in our sources. Its effect on the outcome of a trial rests on the moral pressure it exerts on the dikasts and the self-assuredness the appeal to it by a

⁴⁶ Cf. p. 255 (on *πίστω ἐπιθεῖναι*).

⁴⁷ Cf. above, p. 260 on Dem. 33. 14.

⁴⁸ Dem. 48. 52, cf. Lys. 9. 17, Lyc. 79, Xen. *An.* 2. 5. 7.

⁴⁹ Cf. Ch. 2. Other types are, for example, the oath in the *διαφρήσεις* (Dem. 57. 26), in settlements at arbitration (Isae. 2. 31 3, 5. 32 3), in making contracts or agreements (Dem. 48. 9). An oath only loosely related to the trial is Hyp. 5. 1.

⁵⁰ Hansen (1991), 182 3.

⁵¹ Fränkel (1878).

litigant demonstrates. In the private speeches the range of tactical usages is again very limited; the religious connotations are rarely exploited in full and never exhausted.⁵²

A unique group of oaths mentioned in many speeches of the early fourth century are the vows accompanying the treaties between oligarchs and democrats in 403. They are similar to the heliastic oath in that they are taken independently of individual trials and by the entire citizen body (that is including the dikasts), not by any of the litigants. Accordingly, they are referred to because of their normative power, as they rarely have probative force for any particular circumstances. In general, the references are a reminder of the amnesty and as such an appeal for acquittal.⁵³ Moreover, part of their content is the guarantee not to sue over matters that happened during the oligarchic rule.⁵⁴ The purpose of the form of oath is described as having been to make the agreement binding in all circumstances: even if the agreement had turned out to be disadvantageous, the oaths would have obliged the Athenians to stick to it (Isoc. 18. 25). This belief in the validity of oaths corroborates the Athenians' belief in oaths.

Other Ritual Acts

Ceremonies other than oaths are less frequently referred to, but they are by no means less relevant to the legal decisions taken in court. This is especially the case where rites are used as formal civic procedures or take the place of formal declarations: they are the symbolic representation of a fact or statement. Family business in particular was conducted in this form. In many extant speeches it is essential for the litigants to establish that they are legitimate children of a certain person (especially if that person is deceased) or, more generally, that they are Athenian citizens because both parents were Athenians.

The prime example is Isaeus' eighth speech (*On the Inheritance of Ciron*). It is the only extant speech in which the speaker adduces all four types of rite by which the orators commonly demonstrate citizenship or kinship (Isae. 8. 15–27): the formal introduction at the gathering of the phratry, participation in public celebrations, attendance at the burial of the deceased, and a special relationship expressed at sacrifices. Each of these points relies on the reference to ritual acts

⁵² General remainder e.g. Isae. 4. 31, 6. 2, Dem. 27. 68, 44. 14; the request to stick to the laws and decrees e.g. Isoc. 19. 15, Dem. 46. 27; pious verdict e.g. Dem. 47. 82, 57. 17; *εὖορκος* e.g. Isae. 2. 47, Dem. 29. 4, 45. 88.

⁵³ In *δοκιμασίαι* Lys. 25. 34, 26. 16, cf. Andoc. 1. 103.

⁵⁴ Isoc. 18. 2–3 'You enacted a law to the effect that, if any person should commence a lawsuit in violation of the oaths... the loser should pay a penalty. The purpose of the penalty was this, that persons who had the effrontery to rake up old grudges should not only be convicted of perjury but also, not awaiting the vengeance of the gods, should suffer immediate punishment.' The passage is exceptional in that it states that it is not enough to leave punishment of perjury to the gods. However, it reaffirms the idea that the gods will indeed punish the perpetrator, but the peace is too fragile to wait for the gods.

performed in public and witnessed by the community. The speaker presents the following case: Ciron had no living offspring by his second wife, but by his first wife he had a daughter, the speaker's mother. The opponent, however, doubts the legitimacy of Ciron's first wife and the alleged daughter.⁵⁵

As to the first point: the Athenian citizenry was divided into various subgroups which registered their members; membership in them meant at the same time Athenian citizenship, as the *πόλις* had no list of members of its own.⁵⁶ For the orators the most important point of reference was the *phratry*, a cult group constituted originally (so the Athenians believed) by ties of kinship and contiguity that comprised more or less the entire citizenry.⁵⁷ Every father had to introduce his sons to his *phratry* at their annual celebration, the *Apaturia*.⁵⁸ According to one account the fathers sacrificed and swore that these were their legitimate sons, that is Athenians from both parentage lines. Then the *phratry* members voted whether to admit the new member. This was done by taking the ballot from the altar;⁵⁹ even more ritualistic is the acceptance of a piece of the sacrificial meat from the hands of the candidate (Dem. 43. 82). By contrast, if a member doubted the legitimacy of the candidate, he was expected to lead the victim away before the sacrifice (ibid., Isae. 6. 22). In our context the ritual gains eminent importance by assuming the functions of a declaration by the father and of the administrative act of admission to the citizen body. Its unimpeded performance counts as confirmation that someone is officially Athenian. Moreover, citizen status, if questioned, as well as the issue of parenthood often depends on recollection of the religious act by the participants.⁶⁰

Consequently, the speeches on inheritance issues frequently draw on the introduction to the *φράτρες* as conclusive evidence of kinship. The formula 'He introduced me to the members of the *phratry*' is sufficient to claim legitimate

⁵⁵ The opponent's second point, that his claims were superior to the speaker's in any case because he was a descendant on the male line (§§30–4; he was Ciron's nephew), is not of interest here.

⁵⁶ The second most important group after the *phratry* were the *demes*. On their registers cf. Whitehead (1986), 97–8; on the hierarchy of importance in establishing legitimacy cf. Lambert (1993), 35. The accounts we have of the procedure (most importantly Arist. *Ath. Pol.* 42. 1–2) mention that the *deme* members were under oath when they voted, but there was no elaborate ritual as in the assembly of *φράτρες*, cf. Whitehead (1986), 97–104. For other lists (rarely referred to) cf. Hansen (1986), 14–16.

⁵⁷ Whitehead (1986), 98 n. 55 says that *phratry* affiliation was 'normal but not indispensable' for Athenians, but cf. Lambert (1993), 55–7. Moreover, it may have been better for Athenians if they could show that they belonged to one of the old congregations of the city.

⁵⁸ Another rite which family and friends were called to witness is the *Debate*, the sacrifice on the tenth day after a child's birth; cf. Isae. 3. 30, 33–9, Dem. 39. 22, 40. 28, 59. Further ceremonies existed but are not mentioned in the speeches (e.g. the *Hebdome*, the *Amphidromia*, and the *Choes*), cf. Scafuro (1994), 159, Ogden (1996), 83–126.

⁵⁹ Cf. Dem. 43. 14. The process in the *phratry* of the *Demotionidae* outlined on *IG* ii². 1237. 71–106 (with three witnesses taking an oath and two votes, one each by the *θείσος* and the whole *phratry*) differs in some details, but must in principle have been similar (it may have been so in all *phratry*s, but see Lambert 1993, 173–4). This is affirmed by the formula *φέρειν δὲ τὴν ψήφον ἀπὸ τοῦ βωμοῦ* (Il. 17. 18), matched by the passage from Demosthenes and others, cf. Hedrick (1990), 37.

⁶⁰ Scafuro (1994), 158–70.

descent from or adoption by the person who introduced someone.⁶¹ This is the argument of the speaker in the trial about the inheritance of Ciron (Isae. 8. 19). His mother, too, was accepted by her husband's phratry as being of citizen birth, for on the occasion of her marriage her husband paid the Gamelia for her (§18). This wedding sacrifice symbolized (or at least implied) the acceptance of the woman as Athenian: to both his own and his mother's acceptance by the phratry the speaker can present witnesses. On the other hand, if someone is not known to the alleged father's *φράτερες*, it is legitimate to infer that no relationship exists (Isae. 6. 10–11):

Εὐκτῆμονι γάρ, ὦ ἄνδρες, τῷ Φιλοκτῆμονος πατρί, τοὺς μὲν ὄντως γενομένους παῖδας, Φιλοκτῆμονα καὶ Ἐργαμένην καὶ Ἡγήμονα καὶ δύο θυγατέρας, καὶ τὴν μητέρα αὐτῶν, ἣν ἔγνημεν ὁ Εὐκτῆμων, Μειξιάδου Κηφισιῶς θυγατέρα, πάντες οἱ προσήκοντες ἴσασι καὶ οἱ φράτερες καὶ τῶν δημοτῶν οἱ πολλοί, καὶ μαρτυρήσουσιν ὑμῖν ὅτι δ' ἄλλην τινὰ ἔγνημε γυναικα, ἐξ ἧσιν οἶδε αὐτῷ ἐγένοντο, οὐδεὶς τὸ παράπαν οἶδεν οὐδ' ἤκουσε πώποτε ζώντος Εὐκτῆμονος. καίτοι τούτους εἰκὸς πιστοτάτους εἶναι νομίζεν μάρτυρας τοὺς γὰρ οἰκείους εἰδέναι προσήκει τὰ τοιαῦτα.

The real sons of Euctemon, the father of Philoctemon, namely, Philoctemon himself, Ergamenes, and Hegemon, and his two daughters and their mother, Euctemon's wife, the daughter of Mixiades of Cephisia, are well known to all their relatives and to the members of their phratry and to most of the demesmen, and they all testify to you; but no one is aware or ever heard a word during Euctemon's lifetime of his having married any other wife who became mother by him of our opponents. Yet it is only natural that these should be thought most trustworthy witnesses; for relatives ought to know about such matters.

This illustrates that the *φράτερες* were supposed to know each other. The rites create the sort of public that is necessary to prove that one has been accepted. Their significance lies in their visibility and hence in the possibility of checking the collective memory about the 'recording' of quasi-administrative acts. As a consequence, the Gamelia and the admissions rites at the Apaturia are not alluded to as rites but serve as manifestation and proof of an entirely different point: citizenship as a result of legitimacy. In the case of Ciron's daughter the speaker only stresses that she was wedded with Gamelia 'according to their [the *φράτερες*] statutes'. The father also saw to it that others took notice of this act by inviting friends to the wedding banquet (Isae. 8. 18).

The next type of argument, which again concerns the mother, is her administering an official function at a public festival, in this case the presidency at the Thesmophoria. The fact that she was entrusted with this office clearly indicates that she was accepted as legitimate by the city (§19). In the next paragraph, after he has asserted that he was himself introduced to his father's phratry without anyone objecting, the speaker repeats the points about his mother (§20):

⁶¹ e.g. Isae. 2. 14, 12. 3.

καίτοι μὴ οἷεσθ' ἂν, εἰ τοιαύτη τις ἦν ἡ μήτηρ ἡμῶν οἷαν οὗτοί φασι, μήτ' ἂν τὸν πατέρα ἡμῶν γάμους ἐστῶν καὶ γαμηλίαν εἰσενεγκεῖν, ἀλλὰ ἀποκρύψασθαι ταῦτα πάντα, μήτε τὰς τῶν ἄλλων δημοτῶν γυναῖκας αἰρεῖσθαι ἂν αὐτὴν συνιεροποιεῖν τῇ Διοκλέους γυναικὶ καὶ κυρίαν ποιεῖν ἱερῶν, ἀλλ' ἑτέρα ἂν τινι περὶ τούτων ἐπιτρέπειν.

Yet do not suppose that, if our mother had been such as our opponents allege, our father have either given a marriage feast or provided Gamelia and not rather hushed up the whole matter; or that the wives of the other demesmen would have chosen her to celebrate the festival with the wife of Diocles and given the sacred objects into her hands and not rather entrusted this office to some other woman.

The sacredness of the Thesmophoria is used as a guarantee of the mother's full integration into the community. In contrast to the Gamelia, this office is something special, enhancing the status of the woman and giving her some distinction. This kind of argument with a city-wide festival and the cogency of the responsibility conferred on the sacred official is rare, occurring only once more.⁶² In both cases the religious significance of the post is highlighted.⁶³ Given the exceptional distinction and the parallel treatment, it seems that the function was viewed as more significant as regards the religious implications than the celebrations of the phratries and it was more appropriate to bring in the religious notion.

The references to the sacrifices and celebrations responsibility for which lay with public officials are framed by two far more detailed, vivid, and personal episodes: Ciron's private sacrifices and his burial. The fact that he 'never offered a sacrifice without our presence' may have less immediate probative force, as these were not equally public occasions. Ciron's effort to have his grandchildren around on these occasions, however, is suitable as demonstration of close affiliation and relationship (§§15–16):

οἷα γὰρ εἰκὸς ὑέων <όντων>⁶⁴ ἔξ' ἑαυτοῦ θυγατρός, οὐδεπώποτε θυσίαν ἄνευ ἡμῶν οὐδεμίαν ἐποίησεν, ἀλλ' . . . τῷ Δίῳ τε θύων τῷ Κτησίῳ, περὶ ἣν μάλιστ' ἐκείνος θυσίαν ἐσπούδαζε καὶ οὕτε δούλους προσῆγεν οὕτε ἐλευθέρους ὀθνεῖους, ἀλλ' αὐτὸς δι' ἑαυτοῦ πάντ' ἐποίει, ταύτης ἡμεῖς ἐκοινωνοῦμεν καὶ τὰ ἱερά συνεχειρουργοῦμεν καὶ συνεπετίθεμεν καὶ τὰλλα συνεποιοῦμεν, καὶ ἡὔχετο ἡμῖν ὑγίειαν δίδόναι καὶ κτῆσιν ἀγαθῇν, ὥσπερ εἰκὸς ὄντα πάππον.

As was natural, seeing that we were the sons of his own daughter, Ciron never offered a sacrifice without our presence; [. . .] and when he sacrificed to Zeus Ctesius – a festival to which he attached special importance, to which he admitted neither slaves nor free men outside his own family, at which he personally performed all the rites – we participated in

⁶² Euxitheus in Dem. 57, cf. Ch. 9.

⁶³ For the potential of festivals in this regard cf. Dem. 59. 73–86 (from a public speech). Ar. *Thesm.* 293–4 speaks only of slaves who must not participate in parts of the festival, but in other places (329–30, 541) the women pride themselves on being full Athenians, cf. C. Austin and Olson (2004), p. xlvii. This implies that foreigners were also excluded. Isae. 3. 80 and 6. 49–50 affirm this.

⁶⁴ I follow the conjecture of Buermann also adopted by Ferrucci (2005).

this celebration and laid our hands with his upon the victims and placed our offerings side by side with his, and took part in all the other rites, and he prayed for our health and wealth, as he naturally would, being our grandfather.

In various ways the speaker stresses how much care Ciron took and how important it was to him that the boys were seen in a very close relationship with him: the grandfather would on no occasion perform the rites without his grandchildren, attributing to them honorary seats next to himself; above all, he had them join in the ceremony in the cult dearest to him.⁶⁵ This degree of intimacy makes the speaker's second point plausible: that a slave boy or a bastard would never have enjoyed a similar treatment – or even have been invited in the first place. So they cannot but be his acknowledged legitimate offspring (and because of his love they are also his natural heirs). What comes into play here is the characteristic of religious ceremony as a community event. Religious communities in Greece work on all levels, from the family to the pan-Hellenic assembly at the Games, and the joint participation in rites binds the attendants together as a group beyond the immediate cultic act, expressing allegiance or familiarity.⁶⁶

Thus if Ciron asks his grandsons to join him, he does much more than perform a ritual together with them: he expresses how close they are to him and that he feels a special bond with them. In this context, the house cult underlines the notion of familiarity. The function of the mention is thus not to highlight anything specifically religious about the ceremony, but it serves as a confirmation of the nature of Ciron's emotional attachment to his grandsons.

The reference to shared sacrifices has several parallels. There too speakers point to the strictly private character of the occasions; participation was invited on the basis of familiarity. The value of sharing sacrifices lies in the demonstration of personal predilection as expressed in the invitation rather than in the formality of the act. For example, Cleonymus had bequeathed his estate to Pherenicus and others, even though they were not his next of kin. To prove that he had fallen out with them at the time of his death, his nephew tells the dikasts that at a sacrifice to Dionysus Cleonymus 'invited all his relatives and many other citizens besides, but he offered no place to Pherenicus' (Isae. 1. 31). By contrast, the speaker of Isocrates' *Aegineticus* stresses his closeness to his (alleged) friend and adoptive father by the fact that they shared everything: they 'would perform no sacrifice, make no pilgrimage, and celebrate no festival except in one another's company.'⁶⁷

Where sacrifices mark familiarity, we see how religion affirms bonds, how it serves as the means for inclusion and exclusion. In this context religion is something that is enacted in the process of cult. The frequent mention of ritual

⁶⁵ On 'personal' gods in prayers cf. Versnel (1981), 11–14, for restrictions on the notion Burkert (1996), 9–11.

⁶⁶ Burkert (1985), 58–9, Bell (1998), 208.

⁶⁷ Isoc. 19. 10 οὔτε θυσίαν οὔτε θεωρίαν οὔτ' ἄλλην ἐορτὴν οὐδεμίαν χωρὶς ἀλλήλων ἡγομεν.

contexts in these passages may be caused by a lack of other opportunities to show kinship to the public. To put it the other way round: when a group assembles on a formal occasion, the setting is in most cases given a religious character; so this character is an inherent part, but it also loses significance.⁶⁸

The last proof of legitimacy reverses the perspective: at the burial it is the attitude of the son (or generally: the inheriting relative) that becomes manifest. The bereaved express their attachment to the dead person and thus their claim to inherit by attending the funeral and performing the customary burial rites and sacrifices.⁶⁹ Interestingly, only in two cases is a relationship verified by reference to the due fulfilment of the duty as next of kin, and in neither is the claimant the direct descendant in the paternal line:⁷⁰ one man's claim to have been adopted is disputed by the opponents (Isae. 2. 36 7, 46), while Ciron's grandsons are the children of his daughter (and therefore have a lower rank in the intestacy rules). Moreover, in the latter case there is further evidence than just his attendance at the funeral. The speaker not only organized it, he can claim that the other side let him do so. In the course of the short narrative, the three people of the opposing party closest to the deceased not only tolerate the speaker's taking the leading role in the burial but even encourage him and provide some of the equipment needed: when the speaker approaches the widow to obtain his grandfather's corpse for burial she does not send him away but requests only that the funeral be conducted from her house. She even helps with preparing the corpse (§§21 2). The opponent, when told about her request, does not intervene either. Finally the speaker encounters her brother Diocles (who is said to be the instigator behind the opponent). The latter agrees to let the speaker proceed, on condition that he

⁶⁸ This argument is confirmed by the fact that references to the introduction to the demesmen are in most cases not different in nature from those on the presentation to the *φράτρες* (both acts are mentioned side by side in Isae. 2. 14, 7. 27, Dem. 39. 21, 59. 13). The deme assembly seems much less dominated by religious elements, so if the significance of references shows no major differences, the *differentia specifica* between the two types of scrutiny disappears.

⁶⁹ In Athens the burial could even assume a public significance: whenever an Athenian intended to assume a public office, he had to undergo a scrutiny designed to check whether he was really Athenian. To prove his qualification he had to be able to say where his family lay buried, cf. A. R. W. Harrison (1971), 202, Bergemann (1997), 32. Comparable is the case of Euxitheus, who tries to retain his citizenship and brings forward as one piece of evidence that his brothers were buried in the ancestral tombs by his father without any of the relatives' objecting (Dem. 57. 28, cf. below).

⁷⁰ The natural explanation for the scarcity of the straightforward positive type of argument regarding burial is that a man was allowed to attend any funeral (women not related to the deceased were excluded, cf. Dem. 43. 63). So attendance is not significant for a special relationship. Even the straightforward negative form of questioning legitimacy is found only once. The speaker's aim in Isaeus' *On the Inheritance of Philoctemon* is to show that there is no legal relationship between Euctemon and his alleged wife, the opponent's mother, so the latter has no claim to Euctemon's inheritance (Isae. 6. 64 5). Among other things the speaker denies that Euctemon performed the customary rites (*τὰ νομιζόμενα*) at her tomb. In the oratorical corpus as a whole, the negative type of argument prevails: litigants refer to someone's failure to perform the burial rites rather than point out that he did so correctly. But in the majority of cases they do not do so for the mere statement of fact, that is to prove or disprove descent, but rather to criticize their opponents on moral grounds.

buy from him the equipment he (Diocles) had already purchased.⁷¹ What is more, he starts speaking about the inheritance without being prompted to do so. Had he not recognized him as the dead man's grandson, the speaker says, he would not have acted like this (§24):

καίτοι εἰ μὴ ἦν θυγατρίδους Κίρωνος, οὐκ ἂν ταῦτα διωμολογεῖτο, ἀλλ' ἐκείνους ἂν τοὺς λόγους ἔλεγε "σὺ δὲ τίς εἶ; σοὶ δὲ τί προσήκει θάπτειν; οὐ γινώσκω σε οὐ μὴ εἴσαι εἰς τὴν οἰκίαν." ταῦτ' εἰπεῖν προσήκειν, ἃ περ νῦν ἑτέρους πέπεικε λέγειν. νῦν δὲ τοιοῦτον μὲν οὐδὲν εἶπεν, εἰς ἧν δὲ τὰργυρίον ἐκέλευεν εἰσενεγκεῖν.

Yet had I not been Ciron's grandson, he would never have made these arrangements with me, but would rather have said, 'Who are you? What right have you to carry out the burial? I do not know you: you shall not set foot in the house.' This is what he ought to have said, and what he has now instigated others to say. As it was, he said nothing of the kind, but only told me to bring the money next morning.

Permission to head the ritual is thus viewed as the confirmation of legitimacy. The importance of the act is underlined by the repeated reference to the friends the speaker has brought with him to witness his dealings with Ciron's other relatives (§§21-4). This too affirms the formal character of the procedure. So even the preparations for the burial can form part of the collection of 'evidence', while the burial (and the subsequent rites) are only the ultimate manifestation.

The burial has so far been presented as an occasion on which attendance and participation in the rites equal establishing a claim or at least leaving that possibility open: if someone tries to prevent a person from claiming a right to inheritance, he has to bar him from the corpse. However, religious notions are not addressed as such. The presence of witnesses in the run-up to Ciron's burial even suggests that the burial was primarily the occasion where one's affiliation to the dead became obvious to the public. The performance of rites was an obligation for those who wanted to inherit, and those present at the burial would take notice whether or not a claimant fulfilled his obligation. Religion is a communal affair, a setting in which people publicly (at least in front of other family members) perform symbolic acts. This character makes the religious occasions a point of reference for significant gestures.

However, there is potential for the rhetorical exploitation of the funeral: as a starting-point for moral indignation – and this can be based on, or exploited in connection with, religious ideas. The neglect of one's duties towards the dead is the point of contact with the realm of religion. For the Greeks, good treatment of one's parents is part of the wider concept of *εὐσέβεια*, and failing to do so could be called impiety (*ἀσέβεια*).⁷² This applies to the living as well as to the dead, to

⁷¹ The fact that the dead man's brother-in-law had made arrangements for the funeral could indicate that he was at least unaware of the existence of a closer relative. The speaker has to suppress this circumstance, but it does not damage his cause substantially, once the opponents acknowledge his claim for burial as legitimate.

⁷² Cf. above p. 158. Examples can be found in Andoc. 1. 19 *ἀνοσιώτατον*, Lys. 31. 21-2, Eur. *TrGF* 852, Mikalson (1983), 99-100 on Lycurg. 94-7. The case of Dem. 22. 2 is more intricate, but implies the danger of committing an *ἀσέβημα* if one does not fulfil one's obligations towards one's kinsmen.

nourishing them as well as to performing 'the customary rites' (τὰ νομιζόμενα).⁷³ For this reason the instances in which speakers point to the opponent's failure to attend a burial can evoke the idea of impiety (even though the term is never used): for if the opponent were a legitimate heir, he would have neglected the requirements of εὐσέβεια (cf. Ch. 5); even if he were the legitimate next of kin of the deceased, he would not deserve to inherit. The speaker of *On the Inheritance of Astyphilus*, who challenges the claims of his dead brother's adoptive son, argues not only that the testament ordering the adoption was forged,⁷⁴ but also appeals to the dikasts to declare the adoption void on moral grounds. For the opponent, originally the son of one Cleon, did not perform τὰ νομιζόμενα (Isae. 9. 4) but went to the estate to secure it for himself (§§31–2):

οἶμαι... διὰ τὸ ἀδελφὸν εἶναι καὶ διὰ τὴν ἄλλην οἰκίότητα πολὺ μᾶλλον προσήκειν ἐμοὶ ἢ τῷ Κλέωνος υἱεῖ, ἐπεὶ τούτοις γε οὐδὲ προσποιήσασθαι καλὸν ἦν τῶν Ἀστυφίλου, οἵτινες οὕτω διέκειντο πρὸς αὐτόν, τὰ δὲ ὅσα οὐκ ἔθαιψαν, ἀλλὰ πρότερον ἐπὶ τὴν οὐσίαν ἦλθον πρὶν ἐκέκῃ τὰ νομιζόμενα ποιῆσαι.

I am convinced... that because I am his brother and because we were united by every other family tie, I have a much stronger claim than the son of Cleon; for it was positively indecent in them to put forward pretensions to the estate of Astyphilus, when they were on the terms with him that I have described and did not bury his remains, but entered into possession before performing the customary rites over him.

The opponents' failure to lay out and bury Astyphilus is in the eyes of an Athenian (at least the speaker suggests so) incompatible with their claiming the status of a son. It is bad behaviour (οὐ καλόν) and disqualifies them from the claim to the inheritance or even kinship (the term προσήκειν implies both). In turn, the speaker emphasizes repeatedly that he has a legitimate excuse for his absence: he was on campaign at the time.⁷⁵ The moral significance of observing the burial customs is thus a weighty part in their use as an argument.

The clearest link of moral disapproval to religion can be found in Isaeus' *On the Inheritance of Menecles*. Menecles (II) was the brother-in-law of Menecles (I), who adopted him before his death. In the extant speech he maintains the priority of his claims to those of the opponent, Menecles (I)'s brother, who contests the adoption.⁷⁶ The speech is special for the denigration of the opponent, and the reasons why he is said to deny Menecles (II)'s adoption: not greed and the wish to appropriate the estate but the desire to leave his brother childless is named as the

⁷³ Literary evidence of τὰ νομιζόμενα and an analysis of what they included is collected by Hame (2000). A different form of ἀσέβεια against the dead is denial of burial (on the state's behalf), exploited in Lys. 12, 18, 21, 96, 19. 7. A case of enforced exhumation is reported in a private speech (Isoc. 16. 26).

⁷⁴ e.g. Isae. 9. 1, 22.

⁷⁵ §§3, 4, 5, 7.

⁷⁶ The speech is a supporting speech from a δίκη ψευδομαρτυρίων deriving from the original inheritance trial. The patterns of argumentation, however, are the same because Menecles (II) has to state his original case again.

prime motive for the dispute. Numerous references to burial rites are balanced by remarks on how the opponent tries to subvert them.⁷⁷ As early as in the first paragraph the speaker states that his opponent was 'ashamed neither of the ancestral gods nor of any of you' (Isae. 2. 1) in this endeavour. He is described as doing so with the purpose of causing Menecles (I) to lose all the rites (§46):

οὗτος δὲ νυνὶ ἄκληρον μὲν ἐμὲ ποιεῖν τοῦ κλήρου τοῦ πατρῷου, εἴτε μείζων ἐστὶν οὗτος εἴτε ἐλάττω, ἅπαιδα δὲ τὸν τελευτήσαντα καὶ ἀνώνυμον βούλεται καταστήσαι, ἵνα μήτε τὰ ἱερὰ τὰ πατρῷα ὑπὲρ ἐκείνου μηδεὶς τιμῇ μήτ' ἐναγίζῃ αὐτῷ καθ' ἕκαστον ἐνιαυτόν, ἀλλὰ ἀφαιρῇται τὰς τιμὰς τὰς ἐκείνου.

My opponent wishes now to deprive me of my father's estate, whether it be large or small, and to render the deceased childless and nameless, so that there may be no one to honour in his place the family cults and perform for him the annual rites, but that he may be robbed of all his due honours.

The speaker insinuates that the new heir would not care about Menecles (I)'s tomb: he accuses the opponent of wilful neglect and malicious behaviour.⁷⁸ Menecles (I) is dishonoured after his death and this disrespect to the dead may well be regarded as blatant impiety: so the invocation 'by gods and δαίμονες'⁷⁹ when the speaker asks for the jurors' help may allude to the gods of the underworld being offended by the opponent's disregard. The cult of the dead and of the gods do not seem to be strictly distinguished – the language is the same (ἱερά) and the latter may take offence if the affairs of the former are not conducted in the appropriate way. Here, as in other aspects, what may seem to be a violation of the standards of morality can be easily transformed into an offence against the supernatural sphere.

It is hard to establish for sure what led the speaker to lend this unusual intensity to the otherwise mostly tame religious dimension of the genre of inheritance trials.⁸⁰ The speaker may have faced the problem that the adoption lay 23 years back, and the number of possible witnesses may have been small. So it was hard for him to refute the allegations of his opponent by the normal way of presenting evidence – instead, he compensates by incriminating his opponent in an unparalleled way. Moreover, the burial cult is also accounted for by his principal tactic: since his opponent disputed the adoption on the grounds that Menecles (I) acted under the influence of a woman, the speaker aims to show that

⁷⁷ References to burial and τὰ νομιζόμενα recur throughout the speech: on the one hand, Menecles (I) adopted the speaker for the very purpose of having someone to perform the rites; on the other hand, Menecles (II) carefully observed all the requirements and dates of the customary rites (Isae. 2. 10, 36 7, 45).

⁷⁸ e.g. §§1, 24, 37.

⁷⁹ §47; the form is unparalleled in Isaeus, but occurs in Men. *Dysc.* 622, *Epir.* 1083.

⁸⁰ Huchthausen (1965), 246 suggests that the value of the property under dispute was so petty that to avoid the impression of pedantic litigiousness the speaker needed to make the matter look serious. However, the value of the claim was 300 drachmae and a house of two to three minae (§35), and Isaeus was drawn in at least for this retrial (cf. n. 76). Moreover, it was the opponent who launched the suit, so it was up to him to justify the legal action.

his adoptive father honestly wanted him (and him only) as his son for other reasons. Menecles (I)'s primary⁸¹ reasons were his desire for someone to take care of him in old age and to perform the customary rites after his death. So the speaker demonstrates that he did care and fulfil his father's wishes accordingly. By depicting his opponent as mean rather than greedy he makes his father's wish all the more plausible and brings his own commitment into relief. Thus the speech is pervaded by aggressive remarks condemning the outrageousness of the opponent's hidden motive:⁸² to bereave his brother of his due honours when he was dead. At the start and the end, the typical points to raise the tone, he hints at the fact that this touches the sphere of religion to the extent that the gods too are involved.

On the Inheritance of Menecles, however, is almost all we hear of religious connotations in the inheritance cases. Two other instances are less conspicuous. Once it is said that it is not *ῥσιον* if one person performs the rites and another inherits. In the second, the person who inherits without having performed *τὰ νομιζόμενα* is called *ἀνοσιώτατος*.⁸³ In the former case, from *Against Macartatus*, the speaker can produce an oracle from the Delphic Apollo to back up his claim. The fact that Athenians who had performed the rites had such an authoritative document at hand makes it all the more surprising that it was used only once in the extant corpus. Religious connotations can certainly be felt whenever duties towards the dead are neglected, but nowhere is this called impiety. The offence is rarely depicted as a breach of sacred right; it is rather not *comme il faut*. As a rule, speakers let the facts speak for themselves, leaving it to the listeners to interpret the wrong in whatever way they please.

The references to cults and cult practice considered above had the function of direct proofs of a fact. They are officially or unofficially formalized and have a fixed meaning, no matter whether that meaning exhausts the act (as with procedural oaths) or is only implied, the rite comprising more aspects (as with the burial, the principal purpose of which is still to lay the dead to rest). These 'official' rites are mostly presented as no more than the setting or the form in which civic acts are performed. They are thus comparable to documents such as contracts and are used very much like (or even as a sort of) what Aristotle terms 'artless proofs'.⁸⁴ As a consequence, their religious form is peripheral to the argument. In most forms and contexts, the religious nature of the acts is not mentioned at all. Even if the ceremonial form (and the solemnity it carries with

⁸¹ The reasons why it must be Menecles (II) are that since his brother (as well as Menecles (II)'s brother) has only one son, he could not adopt him without making his brother childless in turn (§10), and that the two families had old connections, the honourable way in which he returned his wife being just one indicator (§§3, 4, 7).

⁸² §§15, 23 4, 26 7, 33, 35, 37, 47.

⁸³ Dem. 43. 65, Isac. 4. 19.

⁸⁴ *Rh.* 1. 2, 1355^b35 7; these rites, however, cannot stand by themselves since they are not independently recorded, but must be confirmed by the 'artless' device of testimonies.

it) enhances their credibility, it remains unclear if it is in any way significant. The speakers are reluctant to have recourse to the religious content, the more so the more official the ceremony is: far from all types of ritual act are openly connected by orators with the idea that an offence against the religious sphere has been committed (and even fewer in an insistent way); the rest are only referred to as administrative acts. For example, the introduction to the *φράτρες* is the most frequently mentioned indication of legitimacy, but the ritual is only once described in religious terms (Dem. 43. 14, mentioning the sacrifice, the altar, and the ceremony of sharing the meat). Even there the speaker does not exploit the description to point at an offence by the opponent.⁸⁵ Of the two cases in which the rites for the dead are overtly used in combination with religious language one deals with a mainly moral problem: the attempt to separate performing the funeral rites from inheritance.

So the case on the inheritance of Ciron, which has been given some prominence in this chapter, is exceptional because all four types of rites with probative force are adduced to prove legitimacy. It is, however, not out of the ordinary in the way the types are employed. The usual number of one or two types in a speech is probably transgressed because conclusive evidence was difficult to present, the maternal line of descent being concerned.⁸⁶ The acts of acknowledgement both by Ciron and by his opponents outside the public occasions are excellent evidence. It is the family bond the rites concentrate on,⁸⁷ rather than the questions of citizenship that are implied in the official ceremonies. The Gamelia may formally have been enough to prove that the mother was acknowledged as Athenian by her husband's phratry,⁸⁸ but it did not prove that she was the daughter of Ciron. In addition, the speaker's own registration was with a different phratry from Ciron's, so it removed him from the grandfather and may be suitable to prove his legitimacy but not his lineage on the maternal side. As compensation, the speaker presents the private rites as evidence of the close personal relationship he had with Ciron: the invitation to his grandfather's favourite sacrifices and his own commitment at the burial show the concern of both sides for each other.

The speech is exemplary for the rest of the relevant group of speeches in that the speaker does not make very much of the ceremonies' and occasions'

⁸⁵ The opponent is said to appeal to the fellow *φράτρες* to perjure themselves by excluding Macartatus. This appeal is juxtaposed with the speaker's own reluctance to act incorrectly (§15). In the case of Euxitheus (Dem. 57. 47) the focus is on the inconsistency of the opponent's behaviour with regard to his opponent Eubulides' legitimacy: he claims that Euxitheus is not a citizen, but had not stopped him in the past when he acted as one, cf. Ch. 9.

⁸⁶ An aggravating element is the seriousness of the accusation, namely that the speaker's grandmother was possibly alleged to be a non-Athenian hetaira (Isae. 8. 43, cf. Ch. 9 on Isae. 6. 47–50).

⁸⁷ Cf. Ferrucci (2005), 167–8.

⁸⁸ Cf. Ogden (1996), 85–6.

connections to religion. The rites are used as evidence for the familiarity between Ciron, his daughter, and the speaker and the truth regarding their family relationship. Neither positive nor negative characterization are openly linked with the narrative of the ceremonies. The speaker demonstrates that he has done his duty at the burial, but nothing more. The objectionable act of his opponent in the section about legitimacy is that he first allowed the speaker to bury Ciron but now challenges his right to inherit. Strong religious language is only used after the proofs concerning the family relations have been presented: the speaker explicitly refers to the exegete, who advised him to take over the costs in order to reinforce his claim on the inheritance (Isae. 8. 39). So he did it and performed the rites 'in order to put an end to their sacrileges (*ἱεροσυλία*)' without specifying what he means by this.⁸⁹ At this point, however, the burial rites no longer have the function of proving that the speaker is Ciron's grandson. He is in the middle of his *indignatio*, so the complex of ceremonies and rites is now exploited for the purpose of denigration. However, we hear no more than the one term that points specifically to religion. The speaker does not stress further that the offence has a religious dimension.

More extended argumentation which is less restrained in its exploitation of this dimension is rare, but as it transgresses the field of probative acts, it will be dealt with in the following chapter.

⁸⁹ Apparently, the term *ἱεροσυλία* could be used in connection with tombs (cf. Pl. *Leg.* 885 A, *Hyp.* X F 49). In the present context, however, the use of the word is hyperbolic, as nobody wanted to steal anything from the tomb (the speaker does not even suggest that his opponents would have failed to sacrifice or let him do so, against Wyse 1904 on 39. 6, 7). Instead, his indignation must regard inheritance in the wrong line, i.e. the assignment of the inheritance to the opponents against the testator's will.

Private Speeches II: Non-Probative Arguments

THE previous group of references to ritual acts constitutes the bulk of religious argumentation in a wider sense, even though, or rather because, they are not so much religious as technical and therefore introduced routinely. In this chapter, I shall consider the other end of the scale: religious references that are not standardized and do not constitute some form of evidence or declaration, that is references that are not formalized patterns of legal action or persuasion.¹ The instances of significant and conspicuous references of the relevant kind are restricted to a few speeches. They can be subsumed into three groups: one exceptional reference to the exegetes' advice in *Against Euergus and Mnesibulus*, the function of religion in separating members of the community from outsiders and the accusations of religious misbehaviour in *Against Conon*.

A speech in which a noticeable reference to religion is at first sight completely unrelated to the issue is the pseudo-Demosthenic *Against Euergus and Mnesibulus*.² The case is one of false witnessing in favour of Theophemus. He and the plaintiff had prosecuted each other in two separate suits for personal injury.

¹ Recurrent basic non-probative features are invocations and the listing of liturgies. However, their connection to religion is tenuous. As to the liturgies (especially the choregia) the necessary information has been given in Ch. 1: liturgies do not normally carry religious significance with them. They prove the liturgist's willingness to make sacrifices in the interest of the city and are the basis for favourable treatment in return by the dikasts (cf. Ober 1989, 231–3 and Millett 1998, 229–39). Liturgies for religious festivals and non-religious trierarchies are often juxtaposed, which suggests that there is no particular religious significance. The significance of invocations is elusive (e.g. Blaszczyk 1932, 1–2, but cf. Treu 1991, 126). An increase in the frequency of invocations from Antiphon to Demosthenes has been established (Kühnlein 1882, 60–3), which has been interpreted as a convergence with colloquial language. This explanation is affirmed by the frequency of invocations in imitations of actual conversation within speeches (Bers 1997, 139–40). The effect of enhanced vividness is sometimes accompanied by an affirmation of statements, if the deity invoked is in some way concerned by the argument, cf. Ch. 8 (on Isae. 2. 47), Isae. 6. 61, Dem. 52. 9 (cf. Din. fr. inc. loc. 29, Pollux 8. 122) and Rydberg-Cox (2000). Some cases of elaborate invocation remain inexplicable, e.g. Dem. 35. 40 *μὰ τὸν Δία τὸν ἀνακτα καὶ τοὺς θεοὺς ἅπαντας*. Socrates' invocation of the dog (*μὰ τὸν κύνα*) must not be mistaken for a pious idiosyncrasy, because even base characters in comedy can use it (Ar. *Vesp.* 83) and Socrates invokes the usual gods in other places, cf. Dodds (1959) on Pl. *Gorg.* 482 B 5.

² Some modern scholars attribute the speech to Apollodorus, e.g. Schaefer (1858), 193–9, Blass (1887–98), iii/1. 547–9, cautiously Trevett (1992), 73, while Harpocration (s.v. *ἐκάλιστρον*) suggests Dinarchus' authorship. However, the basis of any attribution is too weak for certainty.

When the first suit was tried (the one in which the present speaker was the defendant), the testimony now on trial was essential for tipping the balance. After Theophemus had won and before the second case was tried, he and his brother Euergus went to the speaker's estate on the countryside and seized his property as surety for the damages the first court had awarded him. The plaintiff interprets their action as a means to obtain a security to ensure that the speaker would drop all charges. During this operation they mistreated an old freedwoman in such a way that she died after a few days (Dem. 47. 58 9, 67). The plaintiff now tells how he subsequently proceeded: he consulted the exegetes about what he ought to do. Their reply is given as an extensive verbal quotation (§§69 70).³ Their professional directive as religious expounders is to let a relative of the woman, if there be one, make the traditional proclamation at her tomb. The rest of their reply to the speaker is merely advice: not to prosecute anyone himself, since he was neither present on the occasion nor a relative of the woman. Having further consulted the statute of Draco and discussed the matter with friends the speaker decided not to go to court over that incident. This is the last part of the long *narratio* of the extant speech. After the law has been read out the speaker sums up his argument (§74):

πολλαχόθεν μὲν οὖν οἶμαι, ὦ ἄνδρες δικασταί, καταφανή ὑμῖν τὴν μαρτυρίαν εἶναι ὡς ψευδῆς ἐστίν, οὐχ ἥκιστα δ' ἐκ τῶν πεπραγμένων αὐτοῖς ῥάδιον γινῶναι. οὗτοι γὰρ ζῶντο, ὦ ἄνδρες δικασταί, ἐμέ, εἰ πολλά μου λάβοιεν ἐνέχυρα, ἄσμενον ἀφήσειν με τοὺς μάρτυρας τῶν ψευδομαρτυρίων, ὥστε ἀπολαβεῖν με τὰ ἐνέχυρα.

I fancy, men of the jury, that it has become clear to you on many grounds that the deposition is false, but that you see it most readily from the conduct of the men [Theophemus and Euergus] themselves. For they thought, men of the jury, that, if they took a large quantity of goods from me as security, I should be glad to release the witnesses from the charge of false testimony in order to get back the goods.

The lack of clear relation to the point at issue (the veracity of the testimony) has led scholars to believe that 'the speaker has introduced this narrative of the nurse's death in order to show the character of his opponents in a negative light, and to indicate that he, on the other hand, acted with all scrupulousness and without being overly litigious.'⁴

Character portrayal is certainly a welcome by-product of the narrative, but it can hardly account for the long verbal quotation from the exegetes, where a much shorter paraphrase would have done the trick. Moreover, the passage itself does not contain anything suitable for denigration. Once the 'fact' of the freedwoman's injury and subsequent death has been mentioned nothing further is said that would incriminate the alleged culprits. And Theophemus and Euergus are nowhere said explicitly to have caused her death. The closest the speaker

³ The extraordinary character of the episode is best recognized if compared with the brief reference in Isae. 8. 39, the only other reference to the exegetes in the private speeches.

⁴ Tulin (1996), 27.

comes to that statement is: 'On the sixth day after these men had come into the house the nurse died' (§67).⁵ This is probably the consequence of his inability to prosecute them for that charge and the prohibition on calling anyone a murderer: for these are the actions he was dissuaded from by the exegetes, his friends, and the law.⁶ But in the end the passage is unsuitable if it is aimed directly at blackening the reputation of the siblings. For this purpose, it would have been rhetorically far more effective to stop at the nurse's death. On the other hand, the speaker's own virtues are certainly cast in a favourable light by his scruples regarding the exegetes' instructions and the laws. But the reluctance with which he abstains from an accusation is conspicuous. The passage does not show that he is not litigious, but rather that the only reason why he does not go to court is the lack of any chance of securing Theophemus' conviction: for his own part, he would have been prepared to open this new front against his foe and his relatives.

To understand the intention behind this passage, one rather needs to keep in mind the point he is trying to persuade his audience of, that is the function of the passage for the argumentation as shown by the following transition from *narratio* to *peroratio*: it serves to corroborate that Theophemus and Euergus seized his property in order to make him drop his own prosecution for personal injury. The plaintiff tries by all means to show that it would be wrong to view the seizure as the procedure intended by the law. The other two used disproportionate means to take hold of the speaker's property. This is best done by a detailed description, perhaps dramatization, of what they were prepared to do for a single small item: they beat an old woman (sc. to death) just to seize a cup she was withholding from them. The injury of the woman is the main indicator that the opponents' sinister motives and their behaviour were improper and inappropriate in relation to the pretended purpose of obtaining sureties. But the speaker, when making a connection between his opponents and the nurse's death, must face the objection that he has not done anything to avenge it.⁷ In this way Euergus might put the whole story in doubt on the grounds that no accusation was raised, thus taxing the plaintiff with inconsistency. He might even have asserted that if things had happened the way the speaker says, he would have failed to perform his duty. The entire section is an explanation, if not justification, of why the speaker has not prosecuted the men, if the seizure was really as brutal as he says and had the consequences he insinuates. Two authorities are cited (the exegetes and the laws, supplemented by his friends' advice), and the reason why the speaker was not related to the nurse in a way that would allow him to prosecute the alleged murderers is given in detail (§72). The accusation would have followed the logic

⁵ Significantly, in the *peroratio* the speaker mentions only that she was 'beaten [συγκόψαι] for the sake of a cup' (§81), and does not say a word about her death.

⁶ On the law cf. Hillgruber (1988), 4 8 and Wallace (1994); the requirement of kinship for prosecution of homicide is at the core of Tulin (1996).

⁷ The moral obligation to prosecute a relative's killer is clearly implied in Dem. 58. 28 9, cf. Tulin (1996), 105 6.

of the entire feud between Theophemus and himself: he depicts it as not unthinkable that he could have pretended to be legally related to the freedwoman for the sake of Euergus' conviction (§73).⁸ So it is natural that the speaker needs to give good reasons why he missed this new opportunity to attack his opponents. Therefore, rather than showing that he is not litigious the speaker presents his motives for not going to court: he would have gone had there been any chance of the case being admitted. His narrative of the seizure of his goods and the brutality of his opponents needs this justification to remain credible. This is the reason why he can finish the argument so abruptly and state that he has demonstrated the falsity of the testimony and the real purpose of the seizure.

Religion, mainly represented by the expounders of religious regulations and their rulings, is thus introduced as part of the normative authority that forestalls legal action that might have been taken by the speaker. That means he can invoke religion to reject the objections from Theophemus and Euergus. It is thus practically impossible to distinguish or subordinate legal regulations and religious norms. Only the reference to *διωμοσία* (in which the speaker would apparently have had to state that he was a kinsman)⁹ makes a difference: the consequence of a transgression of the religious rules is more awful because it is sanctioned by an oath, but the function as a set of rules is the same.

The introduction of the exegetes thus has an immediate function in support of the argument without explicitly depicting any one of those involved as a villain or a saint. It helps establish the intruders as murderers but does not itself shed any light on their actions: Theophemus and Euergus are not mentioned at all, and in the end the speaker himself does no more than act according to all laws. The instructions given by the religious expounders and thus the sacred rules underlying them assume an authority equal to the laws.

The speeches of the second group to be discussed show a further meaning and effect of community rituals. The performance of rites as an activity of a specific group both binds together those in the groups and separates those who remain outside. The group, in most instances a subset or the entirety of a city community,¹⁰ defines itself in this way. The cases in question are analogous to the proof of affiliation through participation in rites. The reason why discussion of the relevant passages has been postponed to this chapter is that the religious references exceed the function of evidence.

The first case concerns a man trying to re-establish himself as a full citizen after failing at a scrutiny of the whole citizenry. Having been removed from the

⁸ D. Cohen (1992) demonstrates how disputes can result in a series of trials between single members of a community, each being the attempt to avoid the negative outcome of the previous one.

⁹ §73, cf. the quotation on p. 262, where the speaker expresses his fear of the curse.

¹⁰ Cf. Parker (2005*b*), 371–3. Even in Athenian private cult associations of the time citizens and foreigners did not mingle, cf. Parker (1996), 340.

register of his deme Euxitheus appealed to the court for this decision to be annulled as resulting from a plot by the demarch Eubulides.¹¹ In order to prove that he is a real citizen Euxitheus refers to the various rites and indicators we already know from the inheritance trials: his father's kin and the *φράτρες* of his mother's male relatives, as well as people who share the same tombs, all testify or swear to Euxitheus' ties to acknowledged Athenian families (Dem. 57. 22, 36, 40, 54); the father is reported to have buried all Euxitheus' brothers in a family tomb (implying that he recognized them as legitimate offspring, and that the deme members did so as well, §28). The sharing of sacrifices, however, departs from the normal line of argument: Euxitheus (whose various public offices and positions are revealed successively) was among those preselected for the allotment of the priesthood of Heracles (§46). He uses this potential priesthood and Eubulides' inactivity in his preselection to highlight the inconsistency in his opponent's behaviour. In the preceding chapter, the invitation to a sacrifice was interpreted as an expression of familiarity and the acknowledgement of kinship. In this case the speaker does not content himself with drawing inferences from sacrifices that actually took place but draws a contrast with the one that could have taken place. The scene is presented very pointedly: Euxitheus would even have acted as the priest in charge of the sacrifice while Eubulides would have taken part as bystander under his guidance (§47):

οὐκ οὖν δεινόν, ὦ ἄνδρες δικασταί, εἰ μὲν ἔλαχον ἱερεὺς, ὥσπερ προὔκριθην, δεῖν ἂν με καὶ αὐτὸν θύειν ὑπὲρ τούτων καὶ τοῦτον μετ' ἐμοῦ συνθύειν, νῦν δὲ τοὺς αὐτοὺς τούτους ἐμὲ μεθ' αὐτῶν μηδὲ συνθύειν ἔαν;

Is it not an outrage, men of the jury, that, whereas, if I had been chosen by lot as priest, even as I had been nominated, it would have been my duty to offer sacrifice on behalf of these people, and Eubulides would have had to join in the sacrifice with me, is it not an outrage, I ask, that these same people should not allow me even to share in the sacrifices with them?

The passage works in two ways, constituting a very close parallel to Demosthenes' objections against Midias regarding his religious functions while he was a member of the council:¹² either Eubulides tries to exclude someone from the ritual community (*συνθύειν*) without good reason or he has allowed someone who was actually disqualified to hold an important position in the ceremony. If the latter (which corresponds with Euxitheus' present situation, having been deprived of his citizen rights), he disregarded the sacred laws regulating

¹¹ The trial is to be defined as private, though the ancient editors as well as Libanius in his summaries coupled the speech with the public ones against Theocritus and Neaira (Dem. 58 and 59): on the one hand, the issue of citizenship rights is clearly one of public concern, and the accusers have been elected by the deme. On the other hand, unlike in public trials the appeal (*ἐφεσις*) cannot be made by anyone (*ὁ βουλόμενος* of the public trials) and the matter comes before the arbitrators first. Dionysius of Halicarnassus (Dem. 13) also counts the speech among Demosthenes' private orations, cf. Lipsius (1905 15), ii/2. 628 9.

¹² Cf. Ch. 1, p. 42. Ciron's mother serving at the Thesmophoria is also similar, but the speaker there exploits only the retrospective probative force.

admission and somehow devalued or even invalidated the rites.¹³ It is worth noting that it is uncertain if Euxitheus is trying to draw attention to the specifically religious nature of the office. The 'ritual' aspects of this passage are weakened by the juxtaposition of sacred offices with predominantly administrative ones (§46).¹⁴ Nevertheless, he leaves the impression of Eubulides as someone who arbitrarily interferes with sacred offices. Thus he implies some religious fault on his opponent's part.

In other places it is more likely that Euxitheus deliberately exploits the religious aspects in this speech. For on top of the remarks already mentioned we get other unrelated accusations of a religious nature against Eubulides and his associates. Trifling with religious matters may be already suggested in the explanation of how the conflict between Eubulides and the speaker came about: the latter gave evidence in a *γραφὴ ἀσεβείας*, which the former as plaintiff lost with less than the fifth part of the votes. This not only indicates frivolous prosecution but also barred him from future legal action of the same kind and may even have disallowed him entry into precincts.¹⁵

Behaviour that is offensive in religious terms is contrasted with the speaker's correct conduct in a later episode from the time of Euxitheus' demarchy: irrespective of the anger he incurred from many, Euxitheus exacted the rent due on leases of sacred land. Upon this first quarrel, some of the demesmen conspired (literally: 'took an oath together', *συνομύναι*) against the dutiful speaker. They changed the wording of the heliastic oath and committed temple robbery (*ιεροσυλεῖν*, all §64). Again the references are not explicitly marked as touching upon the gods' realm; the conspirators' behaviour, which also includes alterations of a deme decree, is branded shamelessness (*ἀναίδεια*) and contempt of the laws (§§64 5), but not even, for example, as *ἀνόσιον*. However, in comparison with the other private speeches, the number of religious offences mentioned is worth noting. Along with an unusually high number of mentions of various types of oath¹⁶ and with allegations of sacrilege, this speech surpasses all other speeches. It even ends with an appeal to the dikasts not to deny him the right to bury his mother and a threat to kill himself only in order to be buried in Athens (§70), giving the familiar *topos* a new twist.

If we seek to explain this fact, we must note that those references that are not part of the standard pattern concern mostly the public sphere, that is the deme

¹³ That means that the priest did not meet the requirements of his office, a fact which somehow 'tainted' him, probably not unlike moral failures, cf. Lys. 26. 8 and Parker (1983), 97. Not even naturalized citizens were entitled to hold a priesthood (Dem. 59. 92).

¹⁴ οὐτ' ἀρχὰς ἄρχειν οὐθ' ἱερωσύνην κληροῦσθαι, §48. A bit later, he even attenuates his allegations to those of sycophancy, removing the argument completely from the religious sphere.

¹⁵ The prohibition to enter (certain) precincts may have been limited to special procedures such as the *ἐνδειξις* which Andocides had to stand, cf. Lipsius (1905 15), ii/1. 367 8.

¹⁶ §§8 9, 26 oath of the deme assembly; §§22, 39, 44, 53, 56 *διωμοσία* of witnesses; §54 oath to *φράτερες*; §§36, 59: *ξωμοσία*; §§63, 69 heliastic oath; §64 conspiracy (*συνωμοσία*).

level: the hypothetical priesthood of Hercules is probably a priesthood of the deme. The other offences of his opponents concerned Euxitheus because he was holding an official position in that administrative unit. Of course, this concentration derives from the nature of the plea, which is intended to repeal a decision of the deme assembly. But this very fact also removes the trial somewhat from the private sphere, to which inheritance, mercantile, and other cases belong.

In Isaeus' *On the Estate of Philoctemon* the speaker disputes the legitimacy of two sons of Euctemon. He concocts a story about the two sons being born to Euctemon by a prostitute, not by his legal (second) wife. He tries to make up for the lack of plausibility with invective against that woman – of whose alleged identity we know only from the narrative (as there does not seem to be any testimony supporting the story). She is said to have participated in the Thesmophoria – which is now exploited to provoke the dikasts' outrage. The speaker counters the argument that participation in rites proves affiliation or kinship by inverting the perspective of the standard argument: the attendance at a ceremony as a gathering of citizens and mutual witnessing of presence and participation does not serve as proof of affiliation (as was shown to be possible in the last chapter); on the contrary, the scandal consists in the woman's participation even though she was not entitled to it.¹⁷ The laws forbid her to be admitted out of respect for the gods (Isae. 6. 49). The probative function of attendance is dismissed in favour of the exploitation of religious ideas: the woman's mere presence in a precinct and her seeing a procession constitute defilement. Not only her non-Athenian status disqualify her: the speaker also draws attention to her shameful lifestyle (*αἰσχρῶς βιοῦσα*). He thus insinuates that she violates laws and restrictions not only because she belongs to a barred group but also because she is impure.

The reference to the gods in this case points to a disqualification on grounds of religious requirements not met. What is certainly conspicuous about this passage in comparison with the other private speeches is that the attack, the fiercest so far, is directed against a supposed slave (and thus a foreigner). As in the assembly speeches, the exploitation of religion for abuse is rare in the private speeches. In this exceptional case it is directed against an outsider. Licence may be greater in this case than if only citizens are involved.

The explicit mention of the gods in this passage deserves special mention. Not only does the speaker stress that bastards are not allowed to share in the *ἱερὰ καὶ ὄσια* (§47) and call the pertinent laws pious (*εὐσεβεῖς*), but he speaks more than once of the gods themselves. The laws are said to have been made for them and are thus described as sacred in some way. That means that, whereas in the other passages – with the exception of the oracle in *Against Macartatus* (Ch. 8) – the conventional nature of the regulation was not further questioned or justified, the speaker explicitly hints at the gods as the factor that influenced the establishment

¹⁷ Cf. Wyse (1904) on 6. 48. 7, cf. above, Ch. 8 n. 63.

of the law. The aim is easy to detect: to enhance the scandalous nature of the offence by calling attention to the religious nature of the matter and to distract from the meagre evidence the speaker can provide. He replaces proof of the slave origin and immoral lifestyle of the woman by talking of the outrage it constitutes to admit somebody like her into a precinct and into the middle of the community.

The instances of abuse in religious terms just given are significantly different from those found in the bulk of the private speeches, even where they draw on the same occasions. Moreover, most of these speeches do not contain any slander or negative evaluation of actions in terms that derive from the religious register. In Isaeus, for example, terms like *ἀναιδής* far outnumber others such as *ἀνόσιος*.¹⁸ Even where it occurs, religious abuse does not normally come in clusters or in combination with strong allegations that obviously aim at discrediting others primarily for their misdeeds in the field of *εὐσέβεια*. So as a rule these terms remain below the threshold of what I tried to define as significant references to religion in the introduction. A remarkable exception is *Against Macartatus*, where the adjective *μιαρός* is applied four times to the opponents or their actions (Dem. 43. 6, 56, 68, 83), culminating in their description as 'defiled beasts' in the last instance. The use of the religious term comes with the extended description of the Apaturia ceremony (cf. p. 266), and the reading out of the oracle concerning burial may bring out the religious connotation of the term more emphatically. The content presented in the speech and the language reinforce each other.

The last speech I shall treat, Demosthenes' most famous private speech, contains no completely new type of religious argumentation. Rather, it is again based on a type presented in the last chapter and combines the defence against an oath with strong invective.

In the one instance of a substantially important 'free-standing' oath, Ariston had anticipated an oath his opponent Conon would take to affirm that he did not strike first when it came to the brawl between them. One of the weak spots in Ariston's position, as far as we can infer from his own speech, could be that he was no stranger to such brawls. At least it seems that the opponent believes he can make this credible to the dikasts. Conon, according to Ariston, will claim that his own son was part of a gang called something like *ἰθύφαλλοι* or *αὐτολήκυθοι* and insinuate that Ariston was a member of a rival group (§14). The form in which Conon's argument is anticipated is at first not strong evidence that these groups had any religious background. The names, like their behaviour, may be offensive, but not transgressing outright the limits of the licence that spirited youths are granted. The latter group name has no visible connection with ritual, so the former need not be taken as a provocation against traditional religion. It may

¹⁸ *ἀνόσιος* Isac. 4. 19, *μιαρός/μιαρία* Isac. 5. 11 against *σχήλιος* ('wicked') 2. 26, 11. 6, fr. 28, *ἀναιδής/ἀναιδεια* 14 times. Cf. in general Opelt (1992).

have been chosen to hint at the banter permitted in Dionysiac ritual, when the homonymous dances (together with insulting choruses) were performed.¹⁹

A bit later, the significance shifts and the religious connotation is made clearer. But for the time being the speaker himself pretends to be willing to accept the gangs as a tolerable nuisance – as long as the groups fight each other (§§16–17):

ἰθυφάλλοις δὲ καὶ αὐτοληκῦθοις συγχωροῦμεν εἶναι τοῖς υἱέσι τοῖς τούτου, καὶ ἔγωγ' εὖχομαι τοῖς θεοῖς εἰς Κόνωνα καὶ τοὺς υἱεῖς τοὺς τούτου καὶ ταῦτα καὶ τὰ τοιαῦθ' ἅπαντα τρέπεσθαι. οὗτοι γάρ εἰσιν οἱ τελούντες ἀλλήλους τῷ ἰθυφάλλῳ, καὶ τοιαῦτα ποιοῦντες ἃ πολλὴν αἰσχύνην ἔχει καὶ λέγειν, μὴ τί γε δὴ ποιεῖν ἀνθρώπους μετρίους.

[Conon's] sons are welcome, so far as I am concerned, to be ἰθυφάλλοι and αὐτοληκῦθοι; I only pray the gods that these things and all things like them may recoil upon Conon and his sons; for they are those who initiate one another with the rites of the Ithyphallus, and indulge in acts which decent people cannot even speak of without deep disgrace, to say nothing of performing them.

However, Ariston gives his description some wider social significance. He opposes ordinary, decent (μέτριοι) people to these wanton, hubristic upper-class boys (καλοὶ κάγαθοί, §14), who are also depicted as opposed to the πόλις: they put on grim looks, dress like Spartans, and form a band of hetairoi, thus embodying many of the prejudices against subversive elements within Athens. By the religious language of initiation they place themselves outside the community of the all-Athenian cults, and treat the Ithyphallus like a deity of mysteries.²⁰

Nevertheless, the distinction between the generations is maintained throughout the speech. This type of behaviour is singled out as one that is hardly tolerable in youths and totally unacceptable in older people (§21): 'if allowance is to be made for anyone, it should be for those only who commit an act of this sort in the folly of youth – it is for these, I say, that such indulgence should be reserved.' In erring lads this kind of behaviour is objectionable, but it is not unforgivable.

When Ariston comes to the point at which he is to speak about the oath Conon is going to swear, he takes up his earlier points. Conon's oath will be excessively strong, able to convince the credulous dikasts if it is not seen in the context of Conon's life and character (§38). In the following Ariston makes his opponent a member of a gang that is in principle similar to his son's but surpasses it in all aspects of perversity. Whereas he left the group's 'acts' unexplained in the

¹⁹ These were accompanied by αἰσχρολογία and insults: Demochares *FGrH* 75 F 2, Semus *FGrH* 396 F 24, cf. also Dem. 18. 11, 122; Hedreen (2004), 51–8, Csapo (1997), 268.

²⁰ The language is not absolutely clear. Ithyphallus is treated like a god (cf. LSJ s.v. τελέω III. 1. a), but it may be meant jokingly, as *he* is not an official deity but only an object of worship (cf. Xen. *Oec.* 21. 12). The passage could then (and especially if ἰθυφάλλος is not taken as the cult object but in the more physical sense) express licentious sexual behaviour among themselves. For a similar ambiguity with Eros cf. Xen. *Smp.* 1. 10.

first instance, he now goes into detail: they are reported (§39) to have formed a band called *τρίβαλλοι* and used

τά θ' Ἑκαταῖα καὶ τοὺς ὄρχεις τοὺς ἐκ τῶν χοίρων, οἷς καθαίρουσιν ὅταν εἰσιέναι μέλλωσιν, συλλέγοντας ἐκάστοτε συνδειπνεῖν ἀλλήλοις, καὶ ῥᾶον ὁμνύναι καὶ ἐπιορκεῖν ἢ ὅτιοῦν.

to gather up on each occasion and to have for their dinner with one another the food set out for Hecate and the testicles of the pigs which are offered for purification when the assembly convenes, and they thought less of swearing and perjuring themselves than of anything else in the world.

Furthermore, the other members of the group are also notorious individually: Aristocrates had something ugly about him that may have made him awesome; Bacchius was even condemned to death by the Athenians.

There are no absolute rules on what food must be avoided. The *Ἑκαταῖα*, however, consisted in meals placed at crossroads for purificatory or apotropaic purposes.²¹ Attested kinds of food used in them are cheap and partly alien to the usual menu of the Athenians. Moreover, being purificatory the meals were unclean containing the offscourings the sacrificer needed to get rid of and thus eaten only under the constraints of poverty.²² It is not clear what quality predominates in the present context: that both the *Ἑκαταῖα* and the scrota are purificatory sacrifices and unclean, or that they are revolting in terms of taste and under no circumstances appropriate for a group of rich young men. As so often, a separation between the two may be artificial. The intention of Conon's group turns out to be provocation by the complete inversion of and contempt for conventional values: the men eat what is least desirable; they swear a terrible oath invoking destruction upon themselves and thus do what ordinary people such as Ariston and the dikasts are most afraid of (and thus most impressed by if they do not realize that the oaths are false). The eating of unclean food and the violation of oaths may not have disrespect to the gods as an immediate purpose, but they express indifference against what is sacred to the public. In this way we arrive at the common ground of religion and society. Conon indulges in anything that is shocking. He appears as a person who (even at his age) does not respect norms, whether religious or other, and wilfully prompts the outrage of society. At the same time he is not in the least trustworthy. The religious points are thus part of

²¹ Plut. *Mor.* 290 D.

²² Cheap fish Antiphanes *PCG* 69. 14–15 (with the *lectio* Ἑκάτης, cf. the parallels in *PCG* ad loc.) with Nesselrath (1990), 290 n. 14, puppies (on dogs as despised food cf. Alexis *PCG* 223. 4, Ar. *Eq.* 1398–9) Ar. *PCG* 209. Pace Sommerstein (2001), 178 (on Ar. *Pl.* 594–7) I can see no strong reference to impiety in eating the *Ἑκαταῖα*: the passage rather underlines the evils of poverty that makes its victims greedy even for this disgusting kind of food; cf. Luc. *Dial. mort.* 1. 1 and probably Theophr. *Char.* 16. 14 with Diggle (2004), 371; Plut. *Mor.* 708 F–709 A also implies that the food was taken away by others (unless it means that no man would touch it which makes no great difference to the characterization of Conon).

the wider portrayal and contribute to the notion of hubris by which the people beating Ariston are characterized.

Moreover, Ariston makes no longer concessions to youth, as in the earlier part of the speech, but claims continuity from Conon's earlier involvement in gang activities to his present willingness to take the oath: he behaved like a youth (*μειράκιον*) not only when he was young, in a transitional period before entering manhood and returning to the values of society. Instead, he still seems to act in this way. The dikasts are requested to make inferences from his earlier behaviour and the false oaths then about the veracity of the oath in the present trial: he perjured himself then, so why should the oath be true now? Thus even the earlier offences are presented as inexcusable, not merely youthful folly.

By equating earlier perjury and the oath Conon is going to swear in his speech Ariston can diminish the persuasive power of that oath (as seen above in the defence against *προκλήσεις*); he is also able to refute the argument that the fight was only a youthful brawl. The reference to Conon's activity in a *hetairia* may be necessitated by the oath Conon is planning to swear at the end of his speech – if that is the case.²³ But even if Conon did not have it in mind to do so, the assumption that he would allows the speaker to swear himself (in the normal way) and make his oath stand out as modest and therefore true. Nevertheless, the use of religion in this speech seems to be defensive: the allegations and denigrating remarks are subordinate in function to the warding off of Conon's oath. They serve to back up the claim that his oath is worthless. The speaker's oath is the only full case of such an oath being transmitted in the corpus of the orators.²⁴ If this device was uncommon, the speaker may have been forced to introduce and justify it. He does so by anticipating the same from his opponent and depreciating it. In the attack, religious aspects are not marked off as a distinct group of offences. They become prominent, however, when the accusations reach their highest intensity, when the opponent's party goes furthest in uprooting Athenian values.

Of course there are more references to religion, and it is impossible to mention every single one, to say nothing of the impossibility of stating its significance. For example, what is one to make of the following casual reference from *Against Conon* (Dem. 54. 25)?

τὸν γοῦν τῆς Βραυρωνόθεν ἱερείας πατέρ' ὁμολογουμένως οὐχ ἀψάμενον τοῦ τελευτήσαντος, ὅτι τῷ πατάξαντι τύπτειν παρεκελεύσατο, ἐξέβαλεν ἢ βουλή ἢ ἐξ Ἀρείου πάγου, δικαίως.

²³ It is impossible to find out whether Conon's intention to take an oath is feigned or not. Dorjahn (1935) argues for relatively detailed and extended knowledge of litigants' arguments and strategies before the trial – not taking into account that many of the *anteoccupationes* may serve the speaker more than the defendant. Whether an oath not needing to be submitted at the pre-trial could be known at all is beyond our capability to find out.

²⁴ For the other case cf. above, p. 258, where the oath concerns only a minor point.

The father of the priestess at Brauron, although it was admitted that he had not laid a finger on the deceased, was banished by the court of the Areopagus because he had urged the one who dealt the blow to keep on striking. And rightly so.

Why does Ariston mention just this example? Because the man was an important priestess's father? Did that make a difference; or was he more likely to be set free? Or was that case notorious (perhaps because the man was a figure of public interest)?²⁵ The number of such references suggests that closeness to the religious sphere conveys a degree of awe and respectability to a person.²⁶ But they remain elusive, just as other ideas that touch upon religion seem unobtrusive and may be no more than the usual expression of an everyday idea.

The selection presented here was based in the last chapter on the most common types and on the most outstanding examples in this one. However, three of the four cases in this chapter in a way derive from the religious acts and argumentative patterns presented in Ch. 8. The fourth (Dem. 47) uses religion as a norm the speaker has taken as a guideline for his actions. The standard patterns, moreover, deal only with procedural elements or a single issue: legitimacy. This shows how limited the range of motifs is from which the speechwriters draw their religious arguments for private speeches. We always end up with the same types of religious activities, namely the ones that are part of everybody's life and happened in public: personal prayers occur as little as the big sacrileges or great shows of piety ascribed to politicians on trial. Not that the speeches are void of allegations of *ἱεροσυλία* and perjury, but they are not dealt with in detail and the latter is itself part of a standard type.

However, when I say three of the four cases above are still related to the standard patterns of private speeches, I do not mean to deny them their very individual shape and argumentative objective. Each of them forms a different argument. The justification of why the speaker of *Against Euergus and Mnesibulus* did not sue his opponent is the most sober of them. As seen earlier, it is natural to speak about religious matters when you are dealing with a case of homicide. The other three aim straight at their opponents. Eubulides is trapped in a dilemma: whether Euxitheus is really a citizen or not, he is proven to have acted incorrectly. Conon's oath is used as an opportunity to discuss his whole profligate life and demolish the credibility of anything he says. The mother of Philoctemon's heirs, finally, by attending the Thesmophoria and watching the sacrifices, does not prove her citizenship but by contrast defiles the whole festival.

The religious motifs (correct behaviour in connection with homicide, defilement, disrespect for decency combined with offensive behaviour concerning religion), exceptional though they are in the private speeches, are reminiscent of the public speeches. The dilemma regarding Demosthenes' priestly functions

²⁵ Cf. Din. 2. 12, another reference to the relatives of a priestess at Brauron.

²⁶ In private speeches only: Isoc. 16. 25, 19. 5, Isae. 5. 41, 6. 33, 7. 9, 27, 8. 35, Dem. 40. 9, 47. 26.

in *Against Midias* and his alleged promiscuous perjuring himself are closer to the passages discussed above than anything in the private speeches. The question of who must be shut out from sanctuaries is also a recurrent motif in the public speeches.

There is no indication that these arguments originally had their place in public speeches and were imported exceptionally by speechwriters. However, given the infrequency of argumentation that emphasizes its religious content so much in private forensic oratory as a whole, these instances seem alien to an 'ordinary' private speech. It rather appears that the cases themselves had an affinity with public oratory. The invective against the woman, as has been stated, is addressed against a foreigner, who seems by any Athenian standard to have been a welcome target for otherwise inadmissible hostility. The other two cases show more argumentation that is typical for public speeches or speeches with heightened significance.²⁷ Moreover, Ariston himself states that he could have chosen to sue Conon in a public suit, so the matter as such was suitable to be given the full range of arguments at the disposal of a prosecutor in a public case. He 'acts as if it were an action (*γραφή*) for hubris'.²⁸ Euxitheus, finally, was fighting for his civil rights and against the misjudgment of his deme assembly. In case of a conviction, what awaited him was not a fine but slavery.²⁹ So the cases had a public dimension.

These four examples of significant, not formalized, religious argumentation do not disprove the claim that stricter (unwritten) rules for the rhetorical exploitation of religion applied to private speeches. They only show that it is wrong to generalize too rigidly.

²⁷ For a more general correlation between the significance of trials and the use of certain types of argument cf. Rubinstein (2005).

²⁸ D. Cohen (2005), 220, cf. Dem. 54. 1.

²⁹ Arist. *Ath. Pol.* 42. 1.

Conclusion II: The Influence of the Genre

DELIBERATIVE and private forensic oratory differ greatly as regards their subject-matter and style of argumentation. Nevertheless consideration and comparison of the religious argumentation found in them is illustrative as it confirms and further demonstrates the importance of conventions touched on only peripherally in Part I. While the differences between individuals were of the greatest interest as long as only the political speeches were regarded, the general rules and the laws of the 'genres' become pressing where speakers are more or less indistinguishable. Assembly and private speeches confirm the impression from public forensic oratory that some things, especially concerning matters that may be found inauspicious, must not be said. Their avoidance may even be more conspicuous than in the speeches that concentrate on political matters. Moreover, the texts considered in Part II allow even less religious argumentation and thus show that the Athenian orators did not (knowingly or unknowingly) follow certain universal conventions, but differentiated between groups of speeches depending on the setting or the kinds of case they were involved in. There is little to no information about formal requirements for orators varying between public and private cases.¹ The differentiation may therefore be a matter of unofficial convention, that means a refined sense of appropriateness.

How much the employment of religious references varies between the three different broad *genera causarum*, that is how much conventions exist separately for each type, can best be seen in the *Epitaphioi* on the war dead. It has often been stated that the speeches we have consist largely of standard *topoi* with little variation.² Despite the setting at a funeral and the general pathos of the six extant speeches of the genre, religious language does not play too prominent a

¹ Foreigners may not launch some (or most) forms of *γραφή*, cf. Todd (1993), 196; we cannot rely on Aristotle's silence (*Ath. Pol.* 67. 1) to assume that only the litigants in private suits swore to stick to the matter at issue, cf. Rhodes (1981), 719. Most differences concern other formal aspects: the time allowed for pleas as well as the number of *dikasts*. Most importantly, the plaintiff of a *δίκη* did not risk a fine if he gained less than one-fifth of the votes; on the social consequences of the different procedures cf. Osborne (1985). A distinction regarding the permissibility of 'irrelevant' arguments (cf. *Ath. Pol.* 67. 1) has been dismissed (most recently by Lanni 2006, 41 75). Differences between the Areopagus and the heliastic courts may be bigger than between public and private cases (cf. Lanni 2000, 316 27), but an analysis of religious argumentation there is not the intention of this study.

² e.g. Ziolkowski (1981), Loraux (1986), 241 51. The speeches are Thuc. 2. 35 46, Gorgias 80 B 6, Pl. *Menex.* 236 D 249 c, Lys. 2, Dem. 60, Hyp. 6.

role.³ Two of the standard motifs deserve to be considered here: the godlike honours for the dead and the myths by which the speakers exalt the pedigree of the Athenians.

Part of the consolation is the hint at the undying veneration those who sacrificed their lives for the city enjoy. Not only is their fame everlasting, but the city holds contests for, and sacrifices to, them. Three out of the five relevant speeches (the one by Gorgias does not contain a consolation) hint at a convergence of the dead and the gods.⁴ Lysias goes furthest in saying that 'those who died in war receive the same honours as the immortals' (2. 80), by which he means games; Diotima in Plato's *Menexenus* mentions the games too along with rites equalling the private ones (249 b); and the *Epitaphios* in the corpus of Demosthenes' writing speaks of 'immortal sacrifices and contests' (60. 36).⁵

The second *topos* is the citation of myths outlining the Athenian heroism of the past. Lysias, Demosthenes,⁶ and the Platonic Diotima draw on the same repertoire of myths, which they share with other epideictic speeches praising the city: the defence against the Amazons and the Thracians as well as the aid given to Adrastus and the children of Heracles.⁷ The myths are not religious in the sense that there is no indication that the gods are involved but the Demosthenic speech makes clear that there is awareness of a clear distinction between these and historical events like the Persian Wars (60. 9):

τῶν μὲν οὖν εἰς μύθους ἀνεληνεγμένων ἔργων πολλὰ παραλιπὼν τούτων ἐπεμνήσθην, ὧν οὕτως ἕκαστον εὐσχήμονας καὶ πολλοὺς ἔχει λόγους ὥστε καὶ τοὺς ἐν μέτροις καὶ τοὺς τῶν ἀδομένων ποιητὰς καὶ πολλοὺς τῶν συγγραφέων ὑποθέσεις τάκεύων ἔργα τῆς αὐτῶν μουσικῆς πεποιήσθαι ἃ δὲ τῇ μὲν ἀξία τῶν ἔργων οὐδέν ἐστι τούτων ἐλάττω, τῷ δ' ὑπογνώτερόν ἐῖναι τοῖς χρόνοις οὕτω μεμνηθολόγηται, οὐδ' εἰς τὴν ἡρωικὴν ἐπανήκται τάξιν, ταῦτ' ἤδη λέξω.

Omitting many exploits that are classed as myths, I have recalled to mind the above mentioned, each of which provides so many and such charming themes that our poets of epic and lyric and many historians have made the deeds of these men the subjects of their respective arts; at the present time I shall mention those deeds that, though in point of merit they are no whit inferior to the former, still, through their being closer in point of time, have not yet been made mythic legends or even been exalted to epic rank.

³ Prinz (1997), 248–52 shows that the *λόγος ἐπιτάφιος* is not a reflection of a traditional heroic veneration for the war dead. As such the games are not a residuum of an old, genuinely religious character of the celebration.

⁴ Thucydides does not have such a reference in Pericles' speech; the consolatory section of Hyperides' *Epitaphios* is mutilated, but even a cautious equation of the dead with the gods is perhaps made unlikely by the speaker's indignation at the divine honours for a living man, i.e. Alexander (6. 21).

⁵ On the games and their relation to the speech cf. Tsitsiridis (1998), 408–12.

⁶ On the question of authorship of this speech cf. Intro. n. 12. The name Demosthenes should be taken here as meaning the author of the speech transmitted under Demosthenes' name.

⁷ Lys. 2. 4–16 (without the Thracian invasion), Pl. *Menex.* 239 b, Dem. 60. 8, cf. Hdt. 9. 27. 2–4, Isoc. 4. 54–70.

The licence to include such myths, and to identify them as (unverifiable) narratives of ancient times, is appropriate because of the nature of the genre (epideictic) and the particular intention and context of delivery (honouring the war dead). The *topoi* are established and justified by tradition.

In the assembly (and, as it appears, in the meeting of the *νομοθέται*), the perception of what might be said and how was different. The tone is generally much more sober, the argumentation based on facts. Mogens Hansen has tried to reconstruct the atmosphere and the process at an assembly from modern analogues. As a result he suggests that the Athenian assembly was shorter and more efficient than often suggested, with debate focusing on a few important controversial issues.⁸ It is hard to assess with what concentration the assembly worked. There are reports about the heckling of individuals during rivals' speeches.⁹ However, these instances are always referred to as examples of bad conduct and unacceptable behaviour. A speaker could raise the issue to denigrate an opponent for a serious offence against *comme il faut*. If heckling were common practice, we might expect some neutral statements on the fact or allegations against wider groups.

In the results-oriented atmosphere of the assembly, the scarcity of religious references may be more than coincidence or an inexplicable convention. If we take into account that matters concerning the gods were debated as a separate item of the agenda, it seems that in a large part of the debate the gods did not really matter. Proposals were argued and decisions taken in a way that cared about the 'earthly', natural factors that influenced events.¹⁰ Provided that the gods were not offended, the Athenians seem not to have been too concerned about their influence. So the debate on political issues was not mixed with issues concerning the gods, for example how to win the support of the gods in a conflict. Military and foreign policy issues were a field that required a solution on the human level. The gods may be invoked to protect the laws and decrees of the city (as is shown by the frequent invocation at the top of inscribed statutes) but they are not relied upon as part of that solution.

When making political decisions the Athenians thus tended to act in a way we may call rational, not only regarding the logical coherence of their arguments but also in the limitation of these arguments to the human sphere.¹¹ Only uncontroversial commonplaces such as the goodwill of the gods and possibly an introductory prayer¹² find their way into the speeches. Being uncontroversial they may be helpful to create an ethos, but have no place in the debate. Otherwise

⁸ Hansen (1983), 216–17.

⁹ Dem. 13. 20, 19. 23, 45–6, Ar. *Ach.* 38–9 (and Dicaeopolis' action throughout the assembly).

¹⁰ Cf. Herman (2006), 65–6, Starr (1979), 20.

¹¹ Cf. Murray (1990*a*), 17. On rational as opposed to emotive argumentation cf. Herman (2006), 142–3.

¹² Our only evidence is from comedy, cf. p. 221. Nothing of that kind can be found in Demosthenes' collection of poems.

religious ideas or institutions occur only in passing. They are not employed because they are religious, and the religious element does not seem to have a special purpose. Exceptions occur only when the circumstances heat up the atmosphere (and even here they are not directly linked with an appeal to act). So only in one harangue of his later assembly speeches, the *Third Philippic*, does Demosthenes seem deliberately to give the Pythian Games some prominence to enhance the outrage Philip provokes. The emphasis on religion coincides with the speech that shows the greatest rhetorical vehemence. The greater the significance of the decision the easier it was to introduce religious notions. Thus it seems that in the case of an imminent or actual war the speakers found it opportune to point to religion more insistently and also to draw on religion as providing a reason for making a certain decision. This is the case at the start of the Peloponnesian War, which is accompanied by heightened religious activity among the people,¹³ when Demosthenes suggests that it is inevitable that the smouldering war with Philip will soon break out again, and, most of all, when he describes further inactivity as a danger to the city itself. In both cases it is the well-being and maybe even the existence of Athens that is at stake. Religious references in assembly speeches thus accompany passages of a raised tone. This raised tone may not just depend on the subject-matter and the circumstances of the speech but also (again) on the speaker. Cleon is characterized as the 'most violent' speaker of his time (Thuc. 3. 36. 6), a man who did not adhere to accepted conduct on the rostrum. If that translates into increased pathos (of a sort) in his speeches, it would be one possible explanation for his proneness to citing oracles. About Demosthenes' contemporaries it is impossible to say anything for sure, but the extracts from Aeschines' speeches given by himself and Demosthenes, though they are both biased, and the general characterization as *σεμνός* point in the same direction. However, too little has survived to allow more than a conjecture.

Pathos is in principle alien to the private speeches; they are generally written in a restrained style,¹⁴ without the spitefulness and vehemence of the public speeches. Accordingly religious references as a means or as result of heightened pathos are rare. Some speeches even contain no religious references at all.¹⁵ In others only references like that to the priestess of Brauron (cf. pp. 287 8) occur: those in which the religious element is only casually mentioned and where we cannot say for sure whether the fact that a religious official, institution, or occasion is named has any significance. It may vary according to the predisposition of individual dikasts. Otherwise religion again mostly occurs in fixed contexts with fixed functions in

¹³ Cf. Thuc. 2. 8. 2.

¹⁴ For Demosthenes we can find a pertinent distinction in Dion. Hal. *Dem.* 11 22, esp. 13, and 45. 5: in the private speeches he resembles Lysias (whose precise and lucid style is praised throughout), in the public ones he mostly sticks to the middle style (adapting, we have to add, the high style for the strongest passages).

¹⁵ Isoc. 17, 21, Dem. 30.

the trial, that is on a procedural level, or in the argumentation, in which we may call its role documentary. In these cases the religious nature of an action is not normally emphasized and thus does not stand out. Religion and the everyday world do not form a contrast, but the exact opposite is the case: religion is part of normal life, even necessarily so, as many civil acts are carried out in the form of religious ceremony without any 'profane' counterpart.

Even if in these cases the religious character of the procedural or documentary action is drawn attention to, the argument often does not gain considerable significance by it. Enhanced credibility is attributed to sworn statements throughout the corpus, but the religious component remains mostly below the surface of what is expressed. The instances where the significance is highlighted tend to derive from even more specific contexts than the references in general. Of all the oaths connected immediately to the administration of justice, only those that are least related to the legal procedure are exploited in this way: to some degree the *ἐξωμοσία*, which is only a negative statement, but more distinctly the oath after a *πρόκλησις* (in particular the one I have called hypothetical) and the 'free' oath aimed at enhancing the credibility of a plea. Among the other rites, those exploited for their religious contents cannot be singled out so neatly, but it is recognizable that the religious component is stronger in negative statements: when someone fails to conduct a burial or when a person is excluded from sacrifices by the performer or by law. Abiding by the rules does not seem to be an achievement unusual enough to be pointed out.

Whether a speaker could employ religion and stress it in his speech seems to have been largely a matter of appropriateness. The inclusion of religious points could not be done frivolously but had to match the tone – and only in the comparatively few places where the tone was raised could religion itself be made an issue. The frequency of significant religious references correlates roughly with the type of trial;¹⁶ the trials in maritime suits (*δίκαι ἐμπορικάι*),¹⁷ for example, are even more fact-based than the other *δίκαι*, which means that the standards for relevance of an argument are comparatively high. Even in the one instance where the tone becomes more aggressive (Dem. 35. 40–6) it does not lapse into allegations touching upon religious matters. Accordingly, the religious references these speeches contain are few in number and mainly of the standard types. If we look at the *διαδικασίαι* of inheritance cases, the situation is similar with the obvious exception of rites. The references to these rites, however, are formal statements that in most cases do not contribute to character sketches of, or judgements on, the persons involved. Even the moral tone that can be detected in some speeches is not followed by a direct accusation of the breach of sacred

¹⁶ About 25 types of *δίκαι* are attested (cf. Todd 1993, 102–5), though far less are actually represented in our texts. A large group related to them comprises *διαδικασίαι*, the inheritance trials, prominent in particular among Isaeus' speeches.

¹⁷ Dem. 32–5, 37, 56 are the speeches that are normally regarded as falling into this category, cf. e.g. E. E. Cohen (1973), 39.

rights. The two passages with the strongest language are found in *On the Inheritance of Astyphilus* and *On the Inheritance of Philoctemon*. But even in the former, the speaker dispenses with exploitation of the alleged perjury (despite otherwise harsh invective against Hierocles).¹⁸ The attack against the foreign woman, by contrast, does not occur in a regular *διαδικασία*, but in a subsequent prosecution for false testimony (Isae. 6. 49–50).

At the other end of the scale are trials that are closer to public cases: *Against Canon* and *Against Eubulides*. The one is made to look like a public action for *ῥβρις*,¹⁹ the other is a citizenship case that could end with the plaintiff sold into slavery.²⁰ Athenians seem to have recognized varying degrees of ‘privacy’ or public significance of trials, which had an impact on the acceptable types of argument. It has been shown how close the resemblances between public and private speeches could be in the latter case. The argumentative patterns (for examples between *Against Eubulides* and *Against Midias*) are similar, only that the aggressiveness of the terms was on an even higher level in the public speeches. Like others,²¹ religion too was a motif more easily accepted in pleas with a public dimension, resulting in a correlation between the significance of the subject-matter and the frequency of religious arguments. So again, as with the debates in times of war, religious argumentation seems to be employed more easily if the matter can be plausibly described as particularly significant.²² Religious argumentation seems more appropriate if another indicator of heightened significance is combined with it; and it can, in turn, affirm the seriousness and significance of the matter that concerns the public.

An issue that has barely been touched upon so far is individual style of argument. In the assembly speeches the question is whom we should compare Demosthenes with. Aeschines has been described above as a candidate (no more) for using a particularly large amount of religious argument, but if he was, he rather than Demosthenes seems to have been exceptional. In the private speeches there does not appear to be a conspicuous difference between Demosthenes and other speakers. The bulk of evidence used here came from Isaeus and the *Corpus Demosthenicum*, which reflects the two authors’ position in the transmission of private speeches. There is in Demosthenes neither a type of reference that does not occur in the other orators nor any important type known from them that is

¹⁸ Isae. 9. 24 *δοκεῖ δέ μοι καὶ ὁμόσαι ἄσμενος, εἴ τις αὐτῷ ὄρκον διδοίη.*

¹⁹ Cf. above, p. 289.

²⁰ Arist. *Ath. Pol.* 42. 1.

²¹ For a more general correlation between the significance of trials and the use of certain types of argument cf. Rubinstein (2005). Of course, this also worked the other way round, cf. Ch. 8 on Dem. 49. 65–8.

²² Cf. Arist. *Rh.* 3. 7, 1408^a10–14 *τὸ δὲ πρέπον ἔξει ἢ λέξις, ἐὰν ᾗ παθητικὴ τε καὶ ἡθικὴ καὶ τοῖς ὑποκειμένοις πράγμασιν ἀνάλογον. τὸ δ’ ἀναλογόν ἐστιν ἐὰν μήτε περὶ εὐλόγων αὐτοκα βλάβως λέγηται μήτε περὶ εὐτελῶν σεμνῶς, μηδ’ ἐπὶ τῷ εὐτελεῖ ὀνόματι ἐπὶ κόσμος.*

absent from his speeches.²³ Where appropriate, he uses the same means of persuasion as Isaeus, who was (probably incorrectly) said to be his teacher anyway, but we can see the same or similar techniques in Isocrates, Lysias, and the spurious part of the *Corpus* too.²⁴ So they were apparently well known to anyone who was familiar enough with the courts to have their speeches preserved to posterity. For the merely procedural types this might be expected. For the others it shows that there is little individuality in the way he exploits oaths even where they are used as a merely rhetorical contrivance. It also means that Demosthenes in no way 'invented' special ways of handling them. Of the speeches with emphasized religious argumentation arguably only *Against Conon* derives from his pen. One may claim that he applies these techniques with greater virtuosity than others, but that is not the issue here.

The impossibility of distinguishing different authors with regard to their use of religion does not mean that there cannot be anything like a 'personal style' in the use of religious argumentation in the private speeches. It may be rather that our evidence is too thin to allow for such results because we do not have enough speeches written and delivered by the same individual.²⁵ Consistency may also have been required to a lesser extent because the speaker would in most cases not have been known to the majority of dikasts (unlike the politicians of the public trials). However, that uniformity in argumentation was neither achieved nor even desired is clear from the *ῆθοποιία*, the careful construction or affirmation of a character according to the needs of the speaker.²⁶ The most obvious example among the extant speeches is *Against Macartatus*. Since we are not given any information on the speaker's identity, we have no chance of knowing whether the exceptional wealth of religious references is deliberately introduced because of his public standing and character or employed without further reflection. *Against Macartatus*, an inheritance trial, deviates from all other private speeches in its consistent aggressiveness. On the one hand, nowhere else in the private speeches is abuse in religious terms as frequent as here: the term *μιαρός*, avoided almost absolutely in the rest of the private speeches,²⁷ figures strongly and repeatedly.

²³ The exceptions, the *ἀνθρωμοσία* and the oaths of 403, are naturally missing for chronological reasons.

²⁴ The one exception is the 'free' oath. I would suggest that, as with other devices such as the appeal to pity through one's children (cf. Intro. n. 33), speechwriters or their clients may have been reluctant to include such passages in published versions. The 'free' oath in the written version of Dem. 54 is necessitated and justified by close connection with the attack on Conon's life and oath.

²⁵ The only person who could fulfil this function is Apollodorus, of whom we have five private and one public speech (plus another private, probably not composed by himself). A survey of typical features has been undertaken by Trevett (1992), 78–110. With reference to religion no uniform pattern emerges. In two of the private speeches Apollodorus makes heavy use of *πρόκλησις τοποι* (49. 65–7, 52. 27–31), but he nowhere goes to the extremes of his public speech (59. 73–84). The three other speeches contain very little relevant material.

²⁶ As observed e.g. in Usher (1965), Morford (1966).

²⁷ *μιαρόν θηρίον* (§83), for example, is used only twice and only in public speeches (Dem. 58. 49, Din. 1. 50), cf. Ch. 9 n. 18.

This is also the speech in which an oracle is quoted to show that the Delphic Apollo demanded that relatives should be responsible for the performance of the burial rites. Moreover, the sacrifice and vote at the Apaturia is laid out in detail, giving the description of ritual unparalleled influence over the outcome, the admission to the citizen body.

The scathing comments this speech has earned in previous scholarship may be a hint at the authorship of a dabbler. Blass criticizes the arrangement, the weak arguments, the ethos, and the style.²⁸ The accumulation of laws, which this speech presents in an extreme form, has been called typical of speechwriters without professional education.²⁹ The non-religious language and argumentation are also strong.³⁰ This insulting and pompous style could be another indicator of the authorship of somebody who was possibly not fully able to adapt to the style required in the private courts or tried to compensate for the lack of subtlety by overemphasis. Alternatively the speaker may have had his own reasons for giving rein to private indignation. Those, however, are hard to see. In the end, the speech stands out as untypical in a number of respects. We may only assume that the unusual character struck contemporary listeners as much as modern interpreters. Whatever the reasons for this particular character of the speech, it remains an unaccountable exception.

The strong presence of religious elements, that much is clear, is not the only oddity of the speech. These elements are embedded in other argumentation that likewise departs from the standard tone of the private speeches, and in particular those of the inheritance trials. Argumentation based on religion thus cannot be employed at the speaker's will regardless of the context. It is not a type of argument that can be inserted at random like a movable part; instead it needs to match the tone of the speech – or the tone of the speech must be adapted to make the insertion of religious argumentation possible. Unless it is of the procedural or documentary type or the references are casual without recognizable emphasis on the religious nature (that is, if the argument relies on its religious nature), the matter in which it is used has to be serious. Religion is double-faced: ubiquitous on the one hand, but very serious if attention is called to its particular character on the other hand. In that form it requires (and in turn confirms) a context that rises above the mere establishment of facts, such as constitutes the major part of all the private speeches, and stresses the weight of the argument.³¹

²⁸ (1887–98), iii/1. 554–6, also Schaefer (1858), 235–6; against, Usher (1999), 266 n. 78.

²⁹ Trevett (1992), 117.

³⁰ The opposing party is said in various ways to be shameless (*ἀναισχυντος* et sim., e.g. §§23, 38, 42, 65, 72, 78), and the speaker repeatedly accuses several branches of the family of scheming and conspiring against his protégé, trying to make the house desolate (§§7, 32, 38, 76).

³¹ Cf. Cic. *de Or.* 2. 205 *neque parvis in rebus adhibendae sunt hae dicendi faces neque ita animatis hominibus, ut nihil ad eorum mentis oratione flectendas proficere possimus, ne aut inrisione aut odio digni putemur, si aut tragoedias agamus in nugis aut convellere adoriamur ea, quae non possint commoveri.*

Religion tends to be not just one argument beside others, but transcends them in some way. It is combined with pathos – indignant or lofty. Where religion is thus drawn upon, the issue is more serious; laws are more binding; offences are worse or morally more reprehensible; one's own behaviour in turn is even less objectionable. Thus Ariston in Demosthenes' speech spares the overtly religious allegations for the end of his speech. So long as only the (partly forgivable) conduct of the young is criticized, there are no sacrileges mentioned. But as soon as Ariston turns against Conon himself, the allegations are linked to the religious sphere. We do not hear specifically or exclusively religious abuse, but the speaker also draws on religious motifs where he is not dealing with perjury. Equally the idea of exclusion from cults is applied to an individual by Isaeus, where this person is vilified heavily on the grounds of her allegedly shameful private life. In the public speeches, where the opponent is depicted as a villain in all the aspects of his life and actions, characterization touching on religious categories is accordingly given more space.

In retrospect, the amount of religious argumentation in the public forensic speeches becomes all the more conspicuous. The comparison with the assembly and the private speeches brings into relief how much significance the need for religious conformity is given regarding the actions of the city, but even more so the viciousness with which the orators attack each other by use of religion. In analogy to what has been established about the other speeches, it may be suggested that orators in public trials enjoyed more freedom to use religion because the speeches dealt with matters of a higher public significance than the private speeches. Whatever the verdict of the jury, the city would be affected. Acquittals and condemnations could be viewed as political decisions expressing the attitude of the city to policies and politicians.³² Decisions of the assembly could be overturned or even, it has been argued, replaced by the vote of a jury.³³ In private cases, where neither the issues nor the litigants were known or of particular interest to the wider public, the dikasts could rarely be convinced that the case really made a difference to them. The raised tone, the more aggressive rhetoric, and the vehemence with which the dikasts are urged to vote in favour of the speaker are then a consequence of the political and public nature of the *γραφαί*, which is expressed, for example, by the fact that the prosecution was open to any citizen, not just those directly affected by the crime specified in the charge.

The explanation of the frequency of religious argumentation as a consequence of the elevated style, conditioned by public significance, however, does not hold true for the assembly speeches. It is therefore necessary to find a different factor that allowed introducing religious notions in significant number in the courtroom speeches. Since the speeches themselves yield no explicit information and

³² Cf. e.g. Dem. 18. 5.

³³ Hansen (1987).

the rhetorical handbooks are silent about this issue, we have to start once more from the lack of personal attacks in the extant assembly speeches and the condemnation of people who launch such attacks in other speeches. This can only mean that in the assembly, a speaker did not argue against the opponent and for himself (as I tried to show also for *Against Leptines*), but for his own opinion (or proposal) and against other options. In the courts the aim of the plaintiff was (in the best case) the elimination of the opponent from the political stage; the aim of the defendant was a safe escape, combined with the affirmation of his status and political importance.

From the analysis of the corpus of speeches it turns out that the Athenian speakers had a fairly clear idea of what was appropriate to present to their audiences. The rhetorical handbooks give detailed instructions how to employ appropriateness (τὸ πρέπον or *decorum*) in relation to style, and what factors had an impact on what was to be regarded as appropriate. In the course of this study a number of them have appeared as factors that could influence the frequency of religious argumentation and the choice of particular motifs: most prominently these were the setting (that is the *genus causae* or, as a sub-group, even the type of *δίκη*), the subject-matter, and (at least for one group of speeches) the speaker.³⁴ As regards religious argumentation we find very few or no precepts in technical literature, but it seems the standards of appropriateness in the time of Demosthenes were rather high if compared with those for other topics. Where a reference to a rite or a religious procedural form is not required, other motifs of argumentation are far more easily employed than religion: for example, it is much easier to denigrate on the basis of the public dimension of a misdeed alone than to concentrate on the religious elements. For example, Lacritus, a pupil of Isocrates, is accused not only of spending money on the lessons of a 'sophist' (Dem. 35. 40), but also of subverting the courts and himself gathering pupils to teach them to do likewise (§§41–2). All that is done without any references to religion except an invocation (presumably of outrage and disdain) at the start of the passage. By contrast, there are numerous passages, especially those without reference to any public significance, that depict behaviour which could be seen as

³⁴ As regards style, these categories have long been recognized, cf. e.g. Arist. *Rh.* 3. 7, 1408^a 10–14 (above, n. 22). Dionysius of Halicarnassus praises Lysias (*Lys.* 9)...ὁρῶν αὐτὴν [sc. τὴν λέξιν] πρὸς τε τὸν λέγοντα καὶ πρὸς τοὺς ἀκούοντας καὶ πρὸς τὸ πρᾶγμα (ἐν τοῦτοις γὰρ δὴ καὶ πρὸς ταῦτα τὸ πρέπον) ἀρκοῦντως ἡρμοσμένην. καὶ γὰρ ἡλικία καὶ γένει καὶ παιδείᾳ καὶ ἐπιτηδεύματι καὶ βίῳ καὶ τοῖς ἄλλοις, ἐν οἷς διαφέρει τὼν προσώπων πρόσωπα, τὰς οἰκείας ἀποδίδωσι φωνὰς πρὸς τε τὸν ἀκροατὴν συμμετρῆται τὰ λεγόμενα οἰκείως, οὐ τὸν αὐτὸν τρόπον δικαστῇ καὶ ἐκκλησιαστῇ καὶ πανηγυρίζοντι διαλεγόμενος ὅχλῳ. διαφορὰς τε αὐτῷ λαμβάνει κατὰ τὰς ἰδέας τῶν πραγμάτων ἢ λέξις ('...since I see that his words are chosen to suit the speaker, the audience and the subject-matter satisfactorily (for in these and in one's relation to them lies appropriateness). He adopts the voice proper to age, pedigree, education, occupation, way of life and the rest by which one personality is different from others. And he adjusts what is said properly to the listener, not addressing the dikast, the attendant of the assembly and the crowd in festivals in the same way. By his doing the choice of words varies according to the nature of the subject-matter [i.e. in this case the parts of the speech]').

objectionable with regard to religious standards but do not speak about its being a religious offence. The behaviour is simply described and only general disapproval is expressed.

In the end appropriateness remains a category that is judged by everyone individually. There are no absolute rules for the Athenians who listened to the speeches, and they are even harder to track for us more than 2000 years later. What remains for us is to survey the evidence and try to find general rules that cover that evidence while at the same time allowing for exceptions due to the imponderability of many factors such as special circumstances or the idiosyncrasy of author or speaker. More than such an approximation to convention is out of our range.

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